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NEW DELHI, OCTOBER 29—NOVEMBER 4, 2017, SATURDAY/KARTIKA 7—KARTIKA 13, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2549.— केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए असम राज्य सरकार, की सहमति से दिनांक 04.08.2017 की अधिसूचना एचएमए 19021/19/2017-पॉलिटिकल (ए)- एच एंड पी (ईसीएफ: 27889)/9 के तहत गुमनाम बंदूकधारियों द्वारा दिनांक 01.08.2017 को ऑल बी.टी.सी. माइनॉरिटी स्टूडेंट्स यूनियन (एबीएमएसयू), कोकराझार के अध्यक्ष लफीकुल इस्लाम अहमद की हत्या के संबंध में सशस्त्र अधिनियम (1956 का अधिनियम सं. 104) की धारा 25 (1-ए)/27(3) के साथ पठित भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120 बी, 302, 326, 34 के अधीन कोकराझार पीएस केस नं. 492/2017 से संबंधित अपराधों तथा उपर्युक्त अपराधों के संबंध में या क्रम में किसी अन्य अपराध/अपराधों, प्रयासों/दुष्प्रेरणों और षडयंत्र तथा इसके समान तथ्यों के उत्पन्न होने पर समान संव्यवहार की कार्यवाही में किए गए किसी अन्य अपराध/अपराधों का अन्वेषण करने तथा इसके साथ-साथ दोषी व्यक्तियों के विरुद्ध आपराधिक अभियोजन शुरू करने के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और न्यायधिकार क्षेत्र का विस्तार सम्पूर्ण असम राज्य पर करती है।

[फा. सं. 228/36/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 25th October, 2017

S.O. 2549.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946), the Central Government with the consent of State Government of Assam vide Notification No. HMA.19021/19/2017-Political(A)-H&P(ECF:27889)/9 dated 04/08/2017 hereby extends the Powers and Jurisdiction of the members of the Delhi Special Police Establishment in the Whole of the State of Assam for Investigation of the offences relating to Kokrajhar PS Case No.492/2017 under sections 120-B, 302, 326, 34 of the Indian Penal Code, 1860 (Act No. 45 of 1860) read with section 25 (1-A)/27(3) of Arms Act, (Act No.104 of 1956), in respect of killing of one Lafikul Islam Ahmed, President of All B.T.C Minority Students' Union (ABMSU), Kokrajhar on 01.08.2017 by unidentified gunmen and any other offence/offences, attempts, abetments and conspiracy in relation to or in connection with the above mentioned offences and any other offence/offences committed in the course of the same transaction arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons.

[F. No. 228/36/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2550.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए असम राज्य सरकार, की सहमति से दिनांक 04.08.2017 की अधिसूचना एचएमए 19021/19/2017 – पॉलिटिकल (ए) – एच एंड पी (ईसीएफ : 27889)/9 के तहत गुमनाम बंदूकधारियों द्वारा दिनांक 01.08.2017 को ऑल बी.टी.सी. माइनॉरिटी स्टूडेंट्स यूनियन (एबीएमएसयू), कोकराझार के अध्यक्ष लफीकुल इस्लाम अहमद की हत्या के संबंध में सशस्त्र अधिनियम (1956 का अधिनियम सं. 104) की धारा 25 (1-ए)/27(3) के साथ पठित भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120 बी, 302, 326, 34 के अधीन कोकराझार पीएस केस नं. 492/2017 से संबंधित अपराधों तथा उपर्युक्त अपराधों के संबंध में या क्रम में किसी अन्य अपराध/अपराधों, प्रयासों/दुष्प्ररेणों और षडयंत्र तथा इसके समान तथ्यों के उत्पन्न होने पर समान संव्यवहार की कार्यवाही में किए गए किसी अन्य अपराध/अपराधों का अन्वेषण करने तथा इसके साथ-साथ दोषी व्यक्तियों के विरुद्ध आपराधिक अभियोजन शुरू करने के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और न्यायधिकार क्षेत्र का विस्तार सम्पूर्ण असम राज्य पर करती है।

[फा. सं. 228/36/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 25th October, 2017

S.O. 2550.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment. Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Assam vide Notification No. HMA. 19021/19/2017-Political(A)-H&P(ECF:27889)/9 dated 04/08/2017 hereby extends the Powers and Jurisdiction of the members of the Delhi Special Police Establishment in the Whole of the State of Assam for Investigation of the offences relating of Kokrajhar PS Case No. 492/2017 under sections 120-B, 302, 326, 34 of the Indian Penal Code, 1860 (Act, No. 45 of 1860) read with section 25 (1-A)/27(3) of Arms Act, (Act No. 104 of 1956), in respect of killing of one Lafikul Islam Ahmed, President of All B.T.C Minority Students' Union (ABMSU), Kokrajhar on 01.08.2017 by unidentified gunmen and any other offence/offences, attempts, abetments and conspiracy in relation to or in connection with the above mentioned offences and any other offence/offences committed in the course of the same transaction arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons.

[F. No. 228/36/2017-AVD-II]

S.P.R. TRIPATHI, Under Secy.

संचार मंत्रालय**(डाक विभाग)**

नई दिल्ली, 30 अक्टूबर, 2017

का.आ. 2551.—मंत्रिमंडल की नियुक्ति संबंधी समिति, कार्मिक एवं प्रशिक्षण विभाग के पत्र सं. 24/8/2016/-ईओ (एसीसी) दिनांक 09.10.2017 और आरबीआई के पत्र सं. डीबीआर एपीपीटी सं. 4092/29.92.006/2017-18 दिनांक 27.10.2017 के अनुसरण में तथा बैंकिंग विनियामक अधिनियम, 1949 की धारा 35ख के अनुसार, केन्द्रीय सरकार द्वारा श्री सुरेश सेठी (जन्म तिथि 30.03.1965) पूर्व प्रबंध निदेशक, वोडाफोन एम-पैसा लिमिटेड को वेतनमान 2,05,400 – 2,24,400/- रु. (स्तर 16) में इंडिया पोस्ट पेमेंट्स बैंक (आईपीपीबी) के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी के रूप में, पद का कार्यभार ग्रहण करने की तारीख से 3 वर्ष की अवधि के लिए अथवा अगले आदेश होने तक, जो भी पहले हो, के लिए नियुक्त करती है।

[फा. सं. 1-8/2016 – पीबीआई (खण्ड -II)]

मधुमिता दास, उप-महानिदेशक (पीबीआई)

MINISTRY OF COMMUNICATIONS**(Department of Posts)**

New Delhi, the 30th October, 2017

S.O. 2551.—In pursuance to Appointments Committee of Cabinet (ACC), DoPT letter number 24/8/2016-EO (ACC) dated 09.10.2017 and RBI's letter No. DBR. Appt. No. 4092/29.92.006/2017-18 dated 27.10.2017 and in accordance with Section 35B of the Banking Regulation Act, 1949, the Central Government, hereby appoints Shri Suresh Sethi (DoB 30.03.1965), former Managing Director, Vodafone M-Pesa Ltd. As Managing Director and Chief Executive Officer (MD&CEO) of India Post Payments Bank (IPPB) in the scale of pay Rs. 2,05,400 – Rs. 2,24,400/- (Level 16), for a period of 3 years with effect from the date of assumption of charge of the post, or until further orders, whichever is earlier.

[F. No. 1-8/2016-PBI (Vol-II)]

MADHUMITA DAS, Dy. Director General (PBI)

कोयला मंत्रालय

नई दिल्ली, 2 नवम्बर, 2017

का.आ. 2552.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii), तारीख 29 मई, 2017 द्वारा प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का. आ. संख्यांक 1709(अ), तारीख 26 मई, 2017 के प्रकाशन पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि, (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए हैं ;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर-440 001, महाराष्ट्र (जिसे इसमें इसके पश्चात् उक्त सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है, कि इस प्रकार निहित भूमि 36.98 हेक्टर (लगभग) या 91.38 एकड़ (लगभग) माप वाली उक्त भूमि में या उस पर के सभी अधिकार तारीख 29 मई, 2017 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :—

- (1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी ;
- (2) शर्त (1) के अधीन सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और किसी ऐसे अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपीलों आदि जैसी सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे ;
- (3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;
- (4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमियों को किन्हीं अन्य व्यक्तियों को अंतरित करने की शक्ति नहीं होगी ; और
- (5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं ।

[फा. सं. 43015/16/2017 –एलए एण्ड आईआर]

आर.एस. सरोज, अवर सचिव

MINISTRY OF COAL

New Delhi, the 2nd November, 2017

S.O. 2552.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S. O. 1709(E), dated the 26th May, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 29th May, 2017, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act ;

And whereas the Central Government is satisfied that the Western Coalfields Limited, District Nagpur-440 001, Maharashtra (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby direct that the said land measuring 36.98 hectares (approximately) or 91.38 acres (approximately) with all rights in or over the said land so vested shall with effect from 29th May, 2017 instead of continuing to so vest in the Central Government, shall vest in the Government company, subject to the following terms and conditions, namely :-

- (1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
- (2) a Tribunal shall be constituted under section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1) and all expenditure

incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said lands, so vesting, shall also be borne by the Government company;

- (3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;
- (4) the Government company shall have no power to transfer the lands to any other persons without the prior approval of the Central Government ; and
- (5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[F. No. 43015/16/2017 – LA&IR]

R.S. SAROJ, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 26 अक्टूबर, 2017

का.आ. 2553.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 2469 (अ) तारीख 7 सितम्बर, 2015, जो भारत के राजपत्र तारीख 11 सितम्बर, 2015, में प्रकाशित की गई थी द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में बिहार राज्य में “पटना – मोतिहारी – बैतालपुर शाखा पाइपलाइन” के अन्तर्गत जिला पूर्वी चम्पारण में पेट्रोलियम परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी ;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 11 अप्रैल, 2017 तक उपलब्ध करा दी गई थी ;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधिन केन्द्रीय सरकार को रिपोर्ट दे दी है ;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है ;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए ;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगी।

पेट्रोलियम और खनिज पाइपलाइन अधिनियम, 1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतया उत्तरदायी होगी और पाइपलाइन से सम्बन्धित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई वाद दावा या कानूनी कार्यवाही नहीं हो सकेगी।

अनुसूची

जिला : पूर्वी चम्पारण			राज्य : बिहार		
मौजा / ग्राम	सर्वे / ब्लाक / सं. (प्लोट सं.)	सब-डीव-सं.	क्षेत्रफल		
			हेक्टेयर	आरे	वर्ग मीटर
1	2	3	4	5	6
सरोतार थाना नं. : 33	8743		00	02	59
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	8738		00	02	41

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	8424		00	03	75
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	8430		00	02	25
	8427		00	00	37
	8446		00	02	53
	8433		00	05	32
	8434		00	05	93
	8435		00	04	01
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	8484		00	04	31
	8485		00	05	38
	8492		00	00	20
	8491		00	13	21
	8490		00	01	18
	8499		00	06	99
	8488		00	02	82
	8500		00	00	20
	8519		00	11	15
	8520		00	00	25
	8518		00	03	80
	8517		00	04	69
	8515		00	04	98
	8516		00	00	20
	8514		00	05	71
	8534		00	00	25
	8513		00	01	86
	8555		00	06	65
	8558		00	01	66
	8557		00	10	73

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	8559		00	04	59
	8556		00	00	30
	8571		00	11	72
	8570		00	02	44
	8575		00	10	58
	8574		00	03	38
	8577		00	02	47
	8580		00	05	95
	8581		00	06	15
	8582		00	04	82
	8579		00	00	20
	8588		00	00	74
	8589		00	08	64
	8590		00	03	23
	8591		00	06	24
	8592		00	04	89
	8593		00	04	91
	8594		00	12	39
	8603		00	00	20
	8604		00	11	16
	8605		00	00	20
	8606		00	02	68
	8607		00	02	45
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	8622		00	05	97
	8623		00	04	27
	7859		00	00	20
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	8630		00	14	72
	7845		00	02	26
	7844		00	00	53
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	7828		00	01	03
	8854		00	12	80
	7827		00	00	42
	7825		00	02	64
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	8856		00	01	08
	8857		00	01	22
	8858		00	01	25
	8859		00	02	46
	8861		00	02	64
	7824		00	02	67
	7799		00	00	55
	7798		00	00	30
	8867		00	16	73
	8866		00	00	60
	7798		00	01	71
	8868		00	08	14
	8876		00	00	79

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	7797		00	01	62
	7794		00	07	83
	7793		00	04	07
	7792		00	00	98
	7806		00	00	20
	7791		00	05	20
	7789		00	18	02
	7790		00	01	84
	7788		00	03	86
	7779		00	18	90
	9016		00	08	11
	7195		00	00	75
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	9017		00	01	37
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	7193		00	00	51
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	7190		00	04	88
	7189		00	05	08
	7188		00	06	42
	7185		00	00	20
	7187		00	01	46
	7186		00	00	83
	7204		00	11	07
	7182		00	00	44
	7205		00	06	21
	7206		00	00	68
	7207		00	03	82
	7208		00	05	18
	7211		00	02	68
	7212		00	04	24
	7215		00	00	25
	7214		00	08	10
	7218		00	00	43
	7213		00	00	31
	7228		00	17	86
	7229		00	10	34
	7230		00	00	66
	7131		00	05	40
	7130		00	04	93
	7129		00	05	76
	7128		00	00	83
	7127		00	03	46
	7126		00	09	13
	7124		00	00	25
	7125		00	04	13
	6920		00	06	16
	6921		00	05	59
	6922		00	08	34
	6923		00	04	31
	7100		00	05	12
	6936		00	00	20

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	7099		00	11	89
	7097		00	03	79
	7013		00	12	34
	7012		00	06	99
	7011		00	00	25
	7015		00	04	86
	7016		00	08	15
	7088		00	00	25
	7087		00	04	50
	7017		00	08	31
	7085		00	01	14
	7020		00	00	76
	7079		00	04	10
	7080		00	05	43
	7081		00	05	18
	7083		00	00	85
	7078		00	00	20
	7082		00	19	63
	7074		00	01	65
	7076		00	00	70
	7075		00	08	96
	7053		00	00	86
	7068		00	00	20
	7056		00	08	66
	7057		00	04	82
	7058		00	07	57
	5328		00	10	65
	5327		00	00	27
	5339		00	01	47
	5337		00	00	20
	5338		00	08	62
	5340		00	08	98
	5341		00	18	62
	5343		00	06	45
	5584		00	00	20
	5344		00	07	23
	5406		00	00	20
	5405		00	00	42
	5404		00	02	69
	5387		00	04	81
	5386		00	00	40
	5385		00	00	20
	5384		00	09	63
	5357		00	00	57
	5382		00	13	98
	5381		00	05	40
	5380		00	04	61
	5359		00	12	23
	5360		00	06	29
	5352		00	06	68
	753		00	09	15
	752		00	09	69
	747		00	14	33

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	746		00	10	62
	749		00	00	20
	745		00	13	77
	779		00	00	20
	744		00	26	44
	785		00	00	83
	786		00	00	20
	596		00	06	30
	595		00	05	38
	594		00	05	80
	592		00	03	95
	317		00	09	74
	319		00	10	79
	336		00	05	91
	337		00	06	88
	340		00	09	30
	341		00	12	57
	360		00	00	34
	361		00	01	04
	433		00	21	90
	434		00	09	32
	432		00	00	25
	435		00	21	31
	428		00	00	20
	426		00	03	02
	436		00	02	88
	425		00	05	66
	422		00	03	14
	423		00	05	87
	414		00	00	63
	413		00	18	10
	411		00	09	55
	1754		00	13	04
	1753		00	05	23
	1762		00	12	15
	1760		00	04	95
	1761		00	04	56
	1759		00	02	57
	1758		00	05	59
	1810		00	04	62
	1810 / 9339		00	04	09
	1809		00	13	86
	1808		00	07	12
	1806		00	02	05
	1807		00	00	40
	1806 / 9329		00	09	37
	1804		00	00	52
	1803		00	21	05
	1802		00	02	89
	1864		00	12	15
	1865		00	00	49
	1862		00	06	84
	1880		00	15	49

1	2	3	4	5	6
	1882		00	03	09
	1883		00	11	35
	1886		00	03	88
	1884		00	00	20
	1885		00	17	62
	1888		00	17	48
	1891		00	01	22
	1939		00	12	68
	1925		00	01	13
	1926		00	03	05
	1927		00	03	00
	1928		00	03	05
	1929		00	03	29
	1930		00	03	68
	1933		00	01	95
	1931		00	03	76
	1932		00	00	85
	1935		00	17	40
	1922		00	10	53
	42		00	05	07
	41		00	32	98
	39		00	00	32
	40		00	09	01
	15		00	05	33
	14		00	00	20

[फा. सं. आर-25011/17/2013-ओआर-I/39760(पार्ट-I)]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 26th October, 2017

S.O. 2553.— Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas 2469 (A) dated the 07th September, 2015, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (here inafter referred to as the said Act), published in the Gazette of India dated the 11th September, 2015, the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying “Patna - Motihari - Baitalpur Branch Pipeline” for the transportation of Petroleum Products in East Champaran District the state of Bihar by Indian Oil Corporation Limited;

And whereas copies of the said Gazette notification were made available to the public up to 11th April, 2017;

And whereas the competent authority has under sub-section (1) of section 6 of the said Act submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of publication of the declaration, in Indian Oil Corporation Limited, free from all encumbrances.

Indian Oil Corporation Limited shall be exclusively liable for any compensation in terms of Section 10 of the P & MP Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to the pipeline.

SCHEDULE

District : East Champaran			State : Bihar		
Mouja / Village	Survey/Block No.	Sub-Div-No.	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
SAROTAR THANA NO. 33	8743		00	02	59
	8740		00	10	80
	8742		00	00	20
	8741		00	02	35
	8736		00	02	13
	8737		00	01	30
	8738		00	02	41
	8735		00	01	28
	8734		00	02	80
	8732		00	02	16
	8731		00	10	83
	8727		00	07	94
	8723		00	00	36
	8724		00	04	52
	8726		00	01	63
	8725		00	05	08
	8714		00	08	04
	8713		00	09	89
	8709		00	05	68
	8710		00	05	27
	8708		00	00	51
	8711		00	00	20
	8695		00	10	37
	8423		00	00	20
	8424		00	03	75
	8428		00	08	49
	8429		00	00	20
	8430		00	02	25
	8427		00	00	37
	8446		00	02	53
	8433		00	05	32
	8434		00	05	93
	8435		00	04	01
	8444		00	00	20
	8443		00	01	78
	8441		00	10	37
	8440		00	05	09
	8477		00	12	87
	8478		00	04	95
	8479		00	04	23
	8480		00	00	60
	8484		00	04	31
	8485		00	05	38
	8492		00	00	20
	8491		00	13	21
	8490		00	01	18
	8499		00	06	99
	8488		00	02	82
	8500		00	00	20
	8519		00	11	15
	8520		00	00	25
	8518		00	03	80
	8517		00	04	69
	8515		00	04	98
	8516		00	00	20

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	8513		00	01	86
	8555		00	06	65
	8558		00	01	66
	8557		00	10	73
	8559		00	04	59
	8556		00	00	30
	8571		00	11	72
	8570		00	02	44
	8575		00	10	58
	8574		00	03	38
	8577		00	02	47
	8580		00	05	95
	8581		00	06	15
	8582		00	04	82
	8579		00	00	20
	8588		00	00	74
	8589		00	08	64
	8590		00	03	23
	8591		00	06	24
	8592		00	04	89
	8593		00	04	91
	8594		00	12	39
	8603		00	00	20
	8604		00	11	16
	8605		00	00	20
	8606		00	02	68
	8607		00	02	45
	8621		00	02	00
	8622		00	05	97
	8623		00	04	27
	7859		00	00	20
	8624		00	10	12
	8630		00	14	72
	7845		00	02	26
	7844		00	00	53
	8634		00	04	55
	7843		00	00	20
	8635		00	04	74
	8636		00	07	78
	7828		00	01	03
	8854		00	12	80
	7827		00	00	42
	7825		00	02	64
	8855		00	02	70
	8856		00	01	08
	8857		00	01	22
	8858		00	01	25
	8859		00	02	46
	8861		00	02	64
	7824		00	02	67
	7799		00	00	55
	7798		00	00	30
	8867		00	16	73
	8866		00	00	60
	7798		00	01	71
	8868		00	08	14
	8876		00	00	79
	8877		00	01	85
	7797		00	01	62

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	7793		00	04	07
	7792		00	00	98
	7806		00	00	20
	7791		00	05	20
	7789		00	18	02
	7790		00	01	84
	7788		00	03	86
	7779		00	18	90
	9016		00	08	11
	7195		00	00	75
	7194		00	02	03
	9017		00	01	37
	9018		00	02	45
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	9019		00	04	20
	9020		00	01	15
	7190		00	04	88
	7189		00	05	08
	7188		00	06	42
	7185		00	00	20
	7187		00	01	46
	7186		00	00	83
	7204		00	11	07
	7182		00	00	44
	7205		00	06	21
	7206		00	00	68
	7207		00	03	82
	7208		00	05	18
	7211		00	02	68
	7212		00	04	24
	7215		00	00	25
	7214		00	08	10
	7218		00	00	43
	7213		00	00	31
	7228		00	17	86
	7229		00	10	34
	7230		00	00	66
	7131		00	05	40
	7130		00	04	93
	7129		00	05	76
	7128		00	00	83
	7127		00	03	46
	7126		00	09	13
	7124		00	00	25
	7125		00	04	13
	6920		00	06	16
	6921		00	05	59
	6922		00	08	34
	6923		00	04	31
	7100		00	05	12
	6936		00	00	20
	7099		00	11	89
	7097		00	03	79
	7013		00	12	34
	7012		00	06	99
	7011		00	00	25
	7015		00	04	86
	7016		00	08	15
	7088		00	00	25
	7087		00	04	50

1	2	3	4	5	6
	7017		00	08	31
	7085		00	01	14
	7020		00	00	76
	7079		00	04	10
	7080		00	05	43
	7081		00	05	18
	7083		00	00	85
	7078		00	00	20
	7082		00	19	63
	7074		00	01	65
	7076		00	00	70
	7075		00	08	96
	7053		00	00	86
	7068		00	00	20
	7056		00	08	66
	7057		00	04	82
	7058		00	07	57
	5328		00	10	65
	5327		00	00	27
	5339		00	01	47
	5337		00	00	20
	5338		00	08	62
	5340		00	08	98
	5341		00	18	62
	5343		00	06	45
	5584		00	00	20
	5344		00	07	23
	5406		00	00	20
	5405		00	00	42
	5404		00	02	69
	5387		00	04	81
	5386		00	00	40
	5385		00	00	20
	5384		00	09	63
	5357		00	00	57
	5382		00	13	98
	5381		00	05	40
	5380		00	04	61
	5359		00	12	23
	5360		00	06	29
	5352		00	06	68
	753		00	09	15
	752		00	09	69
	747		00	14	33
	748		00	07	94
	746		00	10	62
	749		00	00	20
	745		00	13	77
	779		00	00	20
	744		00	26	44
	785		00	00	83
	786		00	00	20
	596		00	06	30
	595		00	05	38
	594		00	05	80
	592		00	03	95
	317		00	09	74
	319		00	10	79
	336		00	05	91
	337		00	06	88
	340		00	09	30

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	341		00	12	57
	360		00	00	34
	361		00	01	04
	433		00	21	90
	434		00	09	32
	432		00	00	25
	435		00	21	31
	428		00	00	20
	426		00	03	02
	436		00	02	88
	425		00	05	66
	422		00	03	14
	423		00	05	87
	414		00	00	63
	413		00	18	10
	411		00	09	55
	1754		00	13	04
	1753		00	05	23
	1762		00	12	15
	1760		00	04	95
	1761		00	04	56
	1759		00	02	57
	1758		00	05	59
	1810		00	04	62
	1810/9339		00	04	09
	1809		00	13	86
	1808		00	07	12
	1806		00	02	05
	1807		00	00	40
	1806/9329		00	09	37
	1804		00	00	52
	1803		00	21	05
	1802		00	02	89
	1864		00	12	15
	1865		00	00	49
	1862		00	06	84
	1880		00	15	49
	1882		00	03	09
	1883		00	11	35
	1886		00	03	88
	1884		00	00	20
	1885		00	17	62
	1888		00	17	48
	1891		00	01	22
	1939		00	12	68
	1925		00	01	13
	1926		00	03	05
	1927		00	03	00

1	2	3	4	5	6
	1928		00	03	05
	1929		00	03	29
	1930		00	03	68
	1933		00	01	95
	1931		00	03	76
	1932		00	00	85
	1935		00	17	40
	1922		00	10	53
	42		00	05	07
	41		00	32	98
	39		00	00	32
	40		00	09	01
	15		00	05	33
	14		00	00	20

[F. No. R-25011/17/2013/OR-I/39760(Pt.I)]

PAWAN KUMAR, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2554.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 39/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-41012/91/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th October, 2017

S.O. 2554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 39/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 25.10.2017.

[No. L-41012/91/2003-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI****Present :**

JUSTICE S.V. S. RATHORE , Presiding Officer

REFERENCE NO.CGIT-1/39 OF 2004**Parties:** Employers in relation to the management of Western Railway, Mumbai

And

Their workman (Dhruv Charan Pandav)

Appearances:

For the first party : Ms. Fernandes, Adv.
 For the Union : Mr. M.B. Anchan, Adv.
 State : Maharashtra

Mumbai, dated the 5th July, 2017

AWARD PART-II

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. As per the schedule of the Reference, the following question was referred to this Tribunal.

Whether the action of the Management of Western Railway Administration, Churchgate, Mumbai by dismissing the services of Shri Dhruv Chavan Pandav w.e.f.20.10.2003 after imposing the penalty is justified? If not, what relief the workman, Shri Dhruv Charan Pandav is entitled to?

2. Notices were issued to both the parties. On behalf of the workman statement of claim was filed by the workmen's union. The facts necessary for the purpose of this second part of the Award may be summed up as under.

According to the statement of claim filed by Paschim Railway Karmachari Parishad, Mumbai (hereinafter referred to as the Union) the workman Dhruv Charan Pandav was appointed substitute Bungalow Peon in the scale of Rs.2550-3200 (RSRP) attached to Mrs. Rashmi Kapoor, FA & CAO (C-II), Western Railway, Churchgate, with effect from 17.10.2000. The workman fell ill from 5.11.2001 and, therefore, he could not attend his duties for three days i.e. from 5.11.2001 to 7.11.2001. He informed the office and Mrs. Kapoor about his illness. On 8.11.2001 when he went to the bungalow with medical certificate for resuming duty Mrs. Kapoor and family were not at the bungalow and the bungalow was locked. He, therefore, went to the office and met Mr. Gupta, SAO (Admn.) and apprised him the circumstances under which he could not attend his duties from 5.11.2001 to 7.11.2001. Mr. Gupta asked the workman to work in office as Mrs. Kapoor had gone out of Mumbai. He worked in the office from 8.11.2001 to 11.11.2001. On 12.11.2001 he went to the bungalow to resume his duty as directed by Mr. Gupta. However Mrs. Kapoor sent him back to Mr. Gupta. On 12.11.2001 Mr. Gupta was on leave and, therefore, he went back to the bungalow but he was not allowed to resume his duty by Mrs. Kapoor. He went to the office. Mr. Gupta issued him a warning letter and told him to bring his guardian and report at the bungalow. Since his guardian was not available he went to the bungalow alone on 13.11.2001 but he was not allowed to resume his duty. Thereafter the workman daily reported for work at the bungalow and the office but he was not given any work either at the bungalow or at the office. On 29.11.2001 he was issued a chargesheet. The workman denied the charges levelled against him. The workman was suspended by order dt.10.1.2002. Subsequently the workman was dismissed from service by order dt. 20.10.2003. The workman preferred an appeal which was not considered by the Appellate Authority. According to the Statement of claim the charge of remaining absent unauthorisedly is baseless as the workman was not given work and he was paid full wages for the months of November 2001, December 2001 and January 2002. As regards the charge no.2 regarding failure to apprise the telephonic message received by him to Mrs. Kapoor this charge is also baseless because it does not mention date, time and the source from where the message was received. According to the statement of claim since the charges are baseless, therefore, the enquiry held against the workman is vitiated. The first party has not followed the Disciplinary Rules and as such the enquiry is illegal. The workman was not given copies of documents and he was not provided adequate opportunity to defend himself and thus the enquiry is against the principles of natural justice. It has, therefore, been prayed that the workman be reinstated with full back wages and continuity of service.

3. The first party has filed written statement wherein it has denied the entire story narrated in the statement of claim. The question of giving any work to the workman did not arise as he never attended the office from 5.11.2001 to 29.11.2001. The workman while serving as bungalow peon was found to have committed gross misconduct exhibiting lack of devotion to duty and acted in a manner unbecoming of railway servant violating Rule 3.1 (ii) and (iii) of the Railway Service Conduct Rules 1966. The salary of bungalow peon was drawn in different section and the presence of employees was marked in different section and, therefore, on account of lack of communication the salary for the month of November 2001, December 2001 and January 2002 was erroneously drawn. The first charge against the workman was of remaining absent without informing from 5.11.2001 upto 29.11.2001. Even after receiving the chargesheet on 5.12.2001 the workman reported for duty only on 10.1.2002 on which date he was placed under suspension. The workman absented from duties for a period of 67 days. The workman never produced any medical certificate. It has been denied that the first party did not follow Disciplinary Rules. According to the written statement the workman is not entitled to any relief.

4. On the basis of the pleadings of the rival parties the following issues were framed.

- (1) Whether the enquiry held against the workman was not fair and proper?
- (2) Whether the findings given by the Enquiry Officer was perverse?

- (3) Whether the action of the management by removing the workman Dhruv Charan Pandav from service w.e.f. 20.10.2003 is justified?

The Tribunal vide Award-Part I dated 28.2.2013, has already decided Issue No.1 and 2 in favour of the workman and an opportunity was given to the first party to prove the charges against the workman by leading evidence before this Tribunal. Thereafter on behalf of the first party affidavit MW-2 Gladwin Outram was filed on 10.10.2013 for the second part of award. MW-1 Palliyani Bhuwandas was examined and workman Dhruv Charan Pandav also filed his affidavit of evidence. The witnesses were cross-examined by the rival parties. Documentary evidence in support of the oral evidence was also filed. On behalf of the first party entire enquiry proceedings including the warning letter, suspension orders and the letters showing conduct of the workman were filed. The workman has filed his application for sanctioning his medical leave and the medical certificate dated 7.11.2001 and has also filed a certificate of payment of wages to show that he was paid wages for November, December 2001 and January 2002.

5. On behalf of the management it has been argued that the appointment of the workman was only as a substitute worker and was without following due procedure. He had completed only one year and 17 days of service. It has also been argued that on the basis of the documentary evidence and oral evidence it was crystal clear that the conduct of the workman was not proper. He remained absent without permission and information. He declined to follow the orders of his superiors. It has also been argued that the salary for the month of November, December 2001 and upto 10th of January 2002 was given to him due to mistake and it would not mean that his absence was regularized. Reasons for payment of salary have been explained by the witnesses in their evidence. It has also been argued that the workman has not filed any medical certificate during enquiry. He had taken part in the enquiry and was duly represented by the defense representative. He has himself admitted in his evidence that he had taken part in the enquiry proceedings and was represented through a defence representative. It has also been argued that from 5.11.2001 he remained continuously absent and his assertion that on 8.11.2001 he went to the bungalow of his Officer and thereafter he came to the office and kept on running in between the bungalow and office for a long time is absolutely false and baseless. Documents have been filed on behalf of the management showing his misconduct which have been admitted by the workman and, therefore, on the basis of admitted facts itself, it was sufficient to conclude the misconduct of the workman.

6. On behalf of the workman it has been argued that as per the chargesheet issued to the workman there were only two charges. First charge was regarding his absence which as per the statement of claim of the workman was only for three days and the management has wrongly claimed that he remained absent continuously since 5.11.2001. It has also been argued that even if absence of 3 days is proved even then for such short absence, punishment of removal from service was not appropriate punishment. It has also been argued that regarding the second charge there was no evidence to prove the said charge.

7. Per contra, the learned counsel for the management argued that in the statement of imputation of charge all the details of the misconduct were mentioned and keeping in view his past conduct removal from service was the appropriate evidence. Keeping in view the fact that he was appointed only as a substitute home peon and it was mentioned in his appointment letter that in case his services are not required then his services will be terminated as per norms.

8. Now in view of the rival submissions evidence is to be scrutinized.

9. During first part of the Award, the Enquiry Officer was examined and the perusal of the first part Award shows that this Tribunal decided Issues No. 1 and 2 in favour of the workman and has observed as under.

“A perusal of the enquiry report makes it clear that the Enquiry Officer has not discussed the evidence on the basis of which he has reached the conclusion that the workman remained unauthorisedly absent without intimation or that he failed to apprise the officer the telephonic message that he received at her residence. There is no evidence as to what was the message and what was its date, time and source and how the failure to apprise caused any trouble, distress or embarrassment to the officer.

In view of the above the irresistible conclusion is that the enquiry held against the workman is not fair and proper and as such findings given by the Enquiry Officer are perverse.

Issues Nos.1 and 2 are, therefore decided in favour of the workman and against the first party”.

10. The submission of the learned counsel for the management is also to the effect that the workman was appointed only as a substitute bungalow peon and as per the terms of appointment his services could be terminated on joining on transfer by any other employee or for any reasons his services are not required by the Officer with whom he is attached. Therefore, he was a temporary substitute workers and for termination of his services even disciplinary enquiry was not required but inspite of that an opportunity of hearing was given to him by following the prescribed procedure and the Enquiry Officer has rightly held him guilty.

11. Before proceeding further it is necessary to go through the appointment letter of the workman.

“O.O. No. S&C/ADM/HQ/PRTN/NG/88

Date 1.11.2000

Sub : Appointment of NG staff Class IV in Category of Substitute Bungalow Peon Rs. 2550-3200 (RSRP).

Ref. : FA & CAO

On being declared fit medically in C2 category by SR.DMO-CCG's fit certificate No.A-287292 dated 16.10.2000, as advised vide O.O. No. under reference, Shri Dhruba Charan Pandab, is appointed as fresh face substitute Bungalow Peon in grade Rs. 2550-3200 (RSRP) attached to FA&CAO(C) II, in FA&CAO (S&C)'s Office CCG w.e.f. 31.10.2000 (BN), on the following terms.

If the services of the above name employee are not required by the concerned officer for one or other reason or he is rendered surplus due to the transfer of the officer or otherwise, his services will be terminated as per norms."

Thus, a perusal of the terms and conditions contained in the appointment letter makes it abundantly clear that the services of the workman could have been terminated if his services were not required by the concerned officer for one or other reason. Words "one or other reason" are wide enough to bring into its domain the dissatisfactory services of the workman. Before proceeding further in this matter and appreciating the evidence on record, I would like to mention that keeping in view the defence taken by the workman himself, it is abundantly clear that after coming back from his service he made several efforts to go to the duty but the officer with whom he was attached has not permitted him to join. Thus this admission of the workman in his own statement of claim, it would give rise to the conclusion that the officer with whom he was attached did not require his services any more. The reasons for not permitting him to join so would obviously be the past conduct of the workman himself which finds support from the documentary evidence which shall be dealt with in the later part of the Award. The main thrust of argument on behalf of the workman was that there were only two charges against him and as per the first charge was of his absence w.e.f. 5.11.2001 upto date. As per the defence of the workman he fell sick for three days so he could not join and thereafter when he went to join on 8.11.2001 then he was not permitted to join. The second charge was that he failed to deliver/apprise telephonic message received at residence of FA& CAO (W&S) in her absence causing embarrassment to the Officer. The workman in his cross-examination has admitted that he had received the memorandum which is marked as Ex.M-1. M-1 is standard form of chargesheet which contains the charge-sheet and there is already a column of imputation of misconduct of misbehaviour in support of Article of charge and there is also a column for mentioning the documents which shall be considered as evidence against him. In the said columns, it is mentioned that separate sheet is enclosed. Thus the first the Article of charge contains two charges and the second enclosure is statement of imputation which reads as under:

STATEMENT OF IMPUTATION

Shri Dhruba Charan Pandab, while functioning as Bungalow Peon in FA&CAO (W&S) has committed the following gross misconduct in as much as:-

Shri Dhruba Charan Pandab is in the habit of absenting from duty without intimation to the office or the Officer with whom he is attached.

In December 2000, when the employee had hardly put in 2 months of service, he was absent without intimation for 2 days.

The employee has a tendency of being careless, negligent and has utter disregard for instructions given to him. For his repeated failures, he was also served with a written warning by SAO (ADM) and Staff Officer on 8.6.2001.

Even after repeated counselling by FA&CAO(W&S)-CCG, to perform his duties assigned to him with care as Bungalow Peon, he has shown no improvement.

Despite issue of warning and repeated counselling, he has again remained absent unauthorisedly from 5.11.2001 to date.

He failed to deliver telephonic messages received from the office of DY.CAO(W&S) all as well as other messages.

Thus, by his above mentioned acts, Shri Dhruba Charan Pandab violated Rule No. 26 for Article No.1 and exhibited lack of devotion to duty and has acted in a manner unbecoming of a Railway Servant for Article No. 2 thereby violated Rule 3 (1)(ii) & (iii) of Railway Services Conduct Rules, 1966."

The third enclosure to this Memorandum is the list of documents by which Article of charges framed against the workman were proposed to be proved. This documents reads as under:

List of documents by which the article of charges framed against Shri Dhruba Charan Pandab, as proposed to be obtained.

1. Note of FA&CAO (W&S) under whom Shri Pandab is working as Bungalow Peon dated 15.5.2001.

2. Acknowledgement of Warning letter dated 8.6.2001.
3. Muster Roll
4. Letter dated 6.11.2001 to Shri Pandab intimating his absence from 5.11.2001.
5. Note of FA&CAO(W&S) under whom Shri Pandab working as Bungalow Peon dated 29.10.2001 regarding negligence on his part.”

This Memorandum and its three enclosures are signed by the Disciplinary Authority and all the above mentioned documents are dated 29.11.2001. The workman in his cross-examination has admitted that he had received the documents M-2 and M-2. M-2 is a Hindi translation of M-1. Thus the entire material evidence and the allegations against him were duly communicated to the workman. He has filed his explanation to this. Almost similar explanation was given by the workman which has been stated in his Statement of Claim but he has nowhere stated in his explanation that he had obtained any medical certificate from any Doctor regarding his illness while no such medical certificate was filed by him during enquiry proceedings. The said medical certificate was filed by him for the first time alongwith affidavit filed at the stage of second part of the Award. At this juncture, I would like to mention that the standard of proof required in a departmental proceedings are entirely different from the standard of proof required in criminal prosecution. In a criminal prosecution the case has to be proved beyond reasonable doubt but a departmental enquiry can proceed against the workman on the basis of pre-ponderance of probabilities.

12. The argument of the learned counsel for the workman is that in this case, actual officers who have made complaint against him or have issued warning to him were not examined and the management has proved the said documents only through the executive witness. Law is settled on the point that in procedural irregularity in such proceedings which does not go to the root of the case, no any adverse inference can be drawn against the management on this score alone. To get any benefit from such procedural lacunae the workman must show that his defence was prejudiced by such lapse but during the course of argument nothing could be brought to the notice of the Court which could have adversely affected him in his defence.

13. Now I come to the evidence of the management. The first management witness was Pallayani Bhuwandas who was the Enquiry Officer in the departmental enquiry. He has given entire details of the allegations against the workman and also the details of the enquiry conducted against him. After going through the evidence of this witness, it is clear that the workman has fully participated in this enquiry. He was represented by a defence representative. He was given due notice of each date and time and place of hearing. In paragraph 19, 20 and 21 of the affidavit of evidence he has given details as to how efforts were made by the workman for not cross-examining the witness. He has also stated that all the documents in the enquiry were already given to him and he was also given day to day enquiry proceedings and he was also given an opportunity to submit his final brief but the workman with malafide intention to disturb the enquiry proceedings did not seriously attend the enquiry. In cross-examination, this witness has stated that this is not correct to say that statement of the workman was recorded in the absence of his defence representative. He has also denied the suggestion of the learned counsel that the workman was not given the documents alongwith the chargesheet as stated in para 10 of his affidavit. Attendance was marked by Janitel and Janitel was not examined because his supervisor Mr. G.R. Avtram was a witness. The perusal of the enquiry proceedings shows that during enquiry proceedings the workman has given application dated 17.6.2002 wherein he has made several allegations against the management and has made derogatory remarks against the Enquiry Officer. It is true that the workman was paid wages for the month of November, December 2001 and January 2002 but witnesses of the management have explained it that the wages is prepared in anticipation of the presumption that the workman must have worked. Since several sections are involved in this matter and because of lack of communication the wages were paid to the workman. On this ground the argument of the learned counsel for the workman was that since he was paid wages for the aforementioned period, therefore, it would mean that his absence was condoned/regularized so he cannot be punished for his absence. After the first part of the Award, affidavit of Gladwin Avtram was filed on behalf of the management. He has deposed on the basis of the record of the office Western Railway regarding the case of the workman. He was Section Officer at the relevant time and was acquainted with the facts of this case. He has also stated that workman was appointed as substitute on temporary basis as a Bungalow Peon w.e.f. 17.10.2000. He was not appointed against regular and permanent post and he had not completed 3 years of service. He has also stated that from date of his appointment he had not discharged his duty and responsibilities to the best interest of the administration and satisfaction of his Officer. This statement was given by him on the basis of several documents details of the same have been furnished in the affidavit. This witness has also proved the documents which were sent by Mrs. Rashmi Kapoor with whom the workman was attached. (Ex.M-23) dated 15.5.2001.

“This is to place on record that Shri Dhruba Charan Pandab, my Bungalow Peon walked out of the place last week leaving the work entrusted to him half way and stated that he is not interested in working as a Bungalow Peon, but wants to work in the office. He came back subsequently in a resentful mood regarding his action. He was advised by me that he has been engaged with the personal approval of the General Manager and without following the usual recruitment procedures by which office staff are engaged, for the specific purpose

of working as my Bungalow Peon. This is not intended to be an indirect method for giving employment in the office.

He had behaved similarly earlier also in the month of December, when he had barely put in two months of service. As he was new and this was the first instance for which he later apologised, I merely counselled him verbally.

Administration may kindly take note of his conduct for suitable action.

(No. FA/W&S/P.File/2001 dated 15.5.2001).”

He has proved the signature of Rashmi Kapoor on this document. He has also proved the warning letter dated 8.6.2001 issued by Senior Accounts Officer to the workman advising him to improve his performance and desist from showing disobedience to the instructions given to him. He has proved the signature of K.R.Gupta, Sr. Accountant on warning letter. This warning letter bears the acknowledgement signature of the workman. He has also proved the note of Rashmi Kapoor dated 6.11.2001 wherein she has intimated to the Administration that her Bungalow Peon Dhruv Charan Pandav is unauthorisedly absent since 5.11.2001. He has neither taken permission nor sent any intimation regarding his absence. He has also proved a confidential note sent by Rashmi Kapoor with whom the workman was attached as Bungalow Peon wherein she has mentioned that “This is to place on record that Dhruv Charan Pandav, Bungalow Peon attached to the undersigned has been negligent in his duties in as much as he has failed to deliver/apprise me of a very important message received by him at my residence on 26.10.2001 from Dy.CAO (W&S). On enquiring him on the next day, he has admitted his negligence. Such act of negligence on his part has been noticed in the past also and he was counselled by the undersigned”. This confidential note is dated 29.10.2001 whereby Rashmi Kapoor has also recommended for taking necessary action against the employee for his failure to discharge his duties in appropriate manner.

14. Learned counsel for the workman has also filed his written arguments regarding second part of the Award. The sum and substance of the said arguments is that this Tribunal is vested with the power to interfere in the punishment if the same is found to be disproportionate. The submission is that the absence was for three days but this is virtually the defence of the workman and not the charge against him. As per charge-sheet he remained continuously absent from 5.11.2001. The fact that medical certificate dated 8.11.2001 was issued in his favour was mentioned by the workman for the first time when evidence was led on the second part of the Award. No explanation could be furnished by the workman as to why the said certificate could not be filed during departmental proceedings. This argument on behalf of the management that during departmental proceedings there was no such certificate and it was subsequently procured by the workman by some private doctor. Being a Government employee of the Railways, the workman was entitled to medical facilities of the Railway Hospital and he has not furnished any reason as to why he did not go to the Railway Hospital and preferred to go to a private hospital for his treatment. This submission has substance and leads to an inference that the said medical certificate was subsequently procured. The workman in support of his defence could not produce any other witness to support that he remained present in office after 8.11.2001. The argument of the learned counsel for the workman that the wages for the month of November, December 2001 and January 2002 were paid to him would lead to the conclusion that his absence was regularized and his conduct was condoned. This Tribunal does not find any substance in this submission because in a Government Office unless and until the Competent Authority issues an order to stop salary, the salaries are prepared in a routine manner as different sections of the department are involved in that regard. So simply because his salary was paid for the period during which he remained absent cannot be a ground to hold that his absence were condoned by the department.

15. So far as the second party is concerned, the confidential note of Rashmi Kapoor referred above, itself is sufficient to hold the negligent conduct of the workman. It is nowhere the case of the workman that Rashmi Kapoor was having any grudge against him or she was annoyed with him. Why an officer to whom the workman was attached as a Bungalow Peon would write repeated notes against him without any fault or mistake of the workman. It does not appeal to reason. This misconduct of not giving the information received by the workman to the Officer with whom he was attached is also a serious misconduct. Due to such lapse on the part of the workman the Officer must have to suffer serious embarrassment before her superiors. After appreciating the evidence on record, this Tribunal is of the considered view that the Management was successful in proving the charges against the workman.

16. Now coming to the question of appropriate punishment. The above discussion shows that Rashmi Kapoor wrote three notes against him informing the misconduct of the workman. The law is settled on the point that while considering the sentence the past conduct of the workman can also be looked into. It transpires from the material available on record that a warning was also issued to him. For the argument sake, defence of the workman is taken to be true, it shows that Rashmi Kapoor did not permit him to work at her residence would mean that his services were not required by the Officer with whom he was attached. As per the terms of appointment as mentioned earlier this by itself was a ground to terminate his service because his appointment was only temporary as a substitute Bungalow Peon and he was not even confirmed in the post. Therefore, keeping in view the past conduct as established by the material on record, the punishment of dismissal or removal from service was appropriate punishment and no interference is called for.

17. However, it is hereby made clear that the salary already paid to the workman for the period for which he has remained absent shall not be recovered from him.

JUSTICE S.V. S. RATHORE, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2555.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 14/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल- 41012/94/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen, received by the Central Government on 25.10.2017.

[No. L-41012/94/2010-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 14/2011

Reference No. L- 41012/94/2010-IR (B-I)

Dated: 24.5.2011

Sh. Ram Singh Rawat

S/o Sh. Mangal Singh Rawat

R/o Kalaidi Poat Kanakhedi via Sri Nagar

District Ajmer.

V/S

Dy. Chief Vigilance Officer (Store)

North West Railway

GM Office, Near Railway Hospital, Jaipur.

AWARD

Date : 2.8.2017

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of North west Railway, Jaipur terminating services of Sh. Ram Singh Rawat, Ex-Khalasi, vide order dated 29.3.2006 is legal and justified? To what relief the workman is entitled?”

2. According to statement of claim briefly fact of the case is that applicant workman was appointed vide order No. E/Praka/615/1(Bungalow Khalasi (Awazee) dated 6.2.2003 to the post of ‘Awazee Bungalow Khalasi’ by Deputy Chief Personnel Officer, NWR, Jaipur. The applicant was appointed in Vigilance Department (Store) with consent of General Manager to work as ‘Awazee Bungalow Khalasi’ of Deputy Chief Vigilance Officer, Sh. Rakesh Rajpurohit. According to para 4 of statement of claim after completion of satisfactory service of 120 days he was given ‘temporary status’ on 6.6.2003 according to Railway Establishment Manual, 1987.

3. It has been further alleged in para 7 of statement of claim that he was entitled to all the benefits except seniority available to temporary employees because he had acquired 'temporary status' on 6.6.2003 hence, any action against him could take place only under provision of "The Railway Servants (Discipline & Appeal) Rules, 1968". Further, in para 8 of the statement of claim it has been alleged that he was carrying out his work satisfactorily but suddenly on 13.1.2004 Sh. Rakesh Rajpurohit directed him not to come on work & assured him that he will be called for work when required. Applicant has further alleged that Sh. Rakesh Rajpurohit took the mobile number & address of the applicant at Jaipur & applicant on the above assurance stayed in Jaipur on rental house & had to bear the expense of rent till March, 2006.

4. Further, in para 9 of statement of claim applicant has alleged that after direction of Sh. Rakesh Rajpurohit on 13.1.2004 not to come on work applicant was called on 8.8.2004 & engaged on work with Sh. O.P.Sharma, C.M.M. who had come on transfer from Sikanderabad & worked with Sh. O.P.Sharma for one & half month. He has not received payment for the said one & half month period till the date of filing statement of claim. He has further alleged that he was waiting to receive a call from the railway for further engagement but he received a letter dated 8.3.2006 wherein applicant was asked to explain his continuous absence from 13.11.2004 which was replied by applicant vide his letter dated 17.3.2006. Rejecting the explanation of the applicant he was removed from Railway Service without approval of General Manager vide order dated 24.3.2006 which was an order in complete derogation of the provision of Constitution, Law, Rule & Sub-Rule.

5. Further, in para 11 to 13 of statement of claim it has been alleged that his removal from service is against the principle of natural justice & against Sub-rule 9 of Rule, 1968 wherein issuing of charge sheet followed by enquiry is necessary for imposing major penalty of removal from service. Removal of the applicant is further against the provision of Section 25-T (prohibition of unfair labour practice) of I.D.Act, 1947 which is punishable u/s 25(U) with imprisonment for a term of Six month or with a fine of Rs.2000/- or both. It has been prayed that order of termination dated 24.3.2006 be cancelled declaring null & void & reinstating the applicant in the service with back wages & all consequential benefits.

6. Reply to statement of claim consists of two part wherein part I is preliminary objection & part II is parawise reply to statement of claim. In parawise reply to statement of claim statements in para 1,5,6,7,8,9,11,13 & 14 have been denied. About para 3 & 10 it has been alleged that they require no answer & are based on record. Against para 2 it has been alleged that nothing has been done against the law by non-applicant & all steps taken by non-applicant is within the law. Statement in para 4 has been partly admitted & has been alleged that content of this paragraph is far from reality because applicant has given exaggerated version in his statement. In addition to above denial & admission it has been further alleged that applicant was appointed as 'Awazee Bungalow Khalasi' & worked continuously till 13.1.2004 & thereafter without informing the non-applicant left the work place on 13.11.2004. His absence from 13.11.2004 was without authority & thereafter he did not give any information to the non-applicant. He neither contacted the non-applicant nor made demand of any remaining wages thus, the applicant is absent since 13.11.2004 without authority. In para 7 of reply referring to the content of appointment letter it has been alleged that the condition mentioned in the appointment letter as indicated below was accepted by the applicant thus, it is clear that applicant has knowingly violated the condition of appointment letter hence, he is not entitled to any relief. The content of the appointment letter referred in para 7 of the reply reads as under :—

प्रधान कार्यालय,

जयपुर।

सूचना

श्री रामसिंह रावत सुपुत्र श्री मंगल सिंह रावत को रेलवे चिकित्सक द्वारा बी-1 वर्ग में परीक्षण फिट मीमो सं. 126190 दिनांक 05/02/2003 दिये जाने पर महाप्रबन्धक की अनुमति से (भण्डार) विजिलेन्स शाखा में श्री राकेश राज पुरोहित पद उप मु. सतकर्ता अधिकारी का ऐवजी बंगला खलासी वेतनमान रु. 2550-3200/- में रु. 2550/- प्रतिमाह एवं भत्तों पर तत्काल प्रभाव से तीन माह के लिए रिक्त पद के तहत भर्ती किया जाता है।

आपकी भर्ती पूर्णतः तदर्थ है तथा तीन वर्ष की सेवा उपरान्त ही आप विधिवत स्क्रीनिंग के पात्र होंगे अतः तब तक अधीनस्थ अधिकारी द्वारा भेजी जा रही त्रैमासिक कार्य रिपोर्ट संतोषजनक होने पर ही आपके कार्यकाल को आगे बढ़ाया जाएगा, यदि ये रिपोर्ट असंतोषजनक हुई अर्थात् आपके कार्य विमुख होने/अनुपस्थित रहने/दुर्व्यवहार करने व अयोग्य पाये जाने पर /और आवश्यकता न रहने पर /इन दशाओं में आपको रेल सेवा से हटा दिया जाएगा जिसके लिए आपको कोई पूर्व सूचना नहीं दी जाएगी। आपको इस शर्त के साथ भर्ती किया जाता है कि आप वर्तमान में अधिकारी के उपरान्त नए आगन्तुक अधिकारी के साथ कार्य करते रहेंगे, यदि वे ऐसा नहीं चाहेंगे तो आपको रेल सेवा से हटा दिया जायेगा।

उपरोक्त दशाओं में रेल सेवा से हटा दिये जाने पर आप चतुर्थ श्रेणी के किसी भी वैकल्पिक पद पर भर्ती के दावेदार नहीं होंगे।

हस्ताक्षर अपठनीय

6/2/03

उप मुख्य कार्मिक अधिकारी

जयपुर।

सं. ई (प्रका)/615/1(प्रका) (बंगला खलासी) दिनांक 6/2/2003 प्रतिलिपि सूचनार्थ : —

1. श्री राकेश राजपुरोहित —उप मुख्य सतर्कता अधिकारी उ.प.रेलवे, जयपुर।
2. श्री राम सिंह रावत सुपुत्र श्री मंगल सिंह रावत को उनके प्रार्थना पत्र दिनांक 08/01/2003 के संदर्भ में।
3. सचिव महाप्रबन्धक, उ.प.जोन, जयपुर।
4. वेतन लिपिक ।
5. मास्टर फाईल।
6. वि. स. एवं ले. अ., जयपुर।

7. In para 8 of the reply it has been alleged that applicant worked continuously till 13.1.2004 & became absent w.e.f. 13.11.2004 & remained absent without authority of the department & without intimation to the department & did not contact the department. In para 9, 10 & 11 it has been alleged that since 13.11.2004 he is absent. It has been alleged that applicant is not entitled to any relief & his statement of claim is liable to be dismissed.

8. In preliminary objection it has been alleged that he was appointed as 'Awazee Bungalow Khalasi' & worked on that post till 13.1.2004 continuously & thereafter remained absent w.e.f. 13.11.2004 without any authority & without giving any intimation to the department. It has further alleged that he did not contact to the department hence, statement of claim of the applicant is liable to be dismissed. In para 2 of the preliminary objection reference has been made to the condition of appointment letter which has already been mentioned above.

9. It has been further alleged that he was engaged for a fixed period on fixed wages & he was not appointed on any permanent post hence, on this ground also his statement of claim is liable to be dismissed. It has been further alleged that he has been removed due to his continuous absence from duty hence, he is not entitled to any relief.

10. In rejoinder, parawise reply of non-applicant has been denied & content of statement of claim has been reiterated. Against the contention of absence w.e.f. 13.11.2004 it has been alleged that applicant was directed not to come on work w.e.f. 13.11.2004 & it is wrong to say that applicant remained absent w.e.f. 13.11.2004 without intimation to the non-applicant or without authority of the non-applicant. It has been further alleged that between 14.11.2004 to 7.3.2006 applicant was not enquired about his absence & notice dated 8.3.2006 was sent. It has been further alleged that thereafter he was called on 8.8.2005 after arrival of Sh. O.P.Sharma, CMM & he worked with him for one & half month.

11. In reply to preliminary objection it has been alleged that he was appointed as 'Awazee' on 6.2.2003. Applicant has quoted the provisions about definition of 'Substitute', 'Emoluments payable to Substitute' & 'Rights & privileges admissible to the Substitutes'. He has alleged that he worked till 13.11.2004 & did not come after 13.11.2004 on the direction of non-applicant & he further worked for one & half month with Sh. O.P.Sharma, CMM when he was called for work on 8.8.2005. Applicant has alleged that on his own accord neither he stopped working nor he was absent without authority as alleged by non-applicant.

12. Applicant has filed his affidavit in evidence on 16.4.15 in support of his claim & has been cross examined on 24.6.15. Affidavit of Sh. Lakhpat Singh Chaudhary Deputy Chief Vigilance Officer has been filed in evidence on 7.12.16 by non-applicant & the witness has been cross examined on 2.1.17.

13. Heard the argument of learned representative of both the parties & perused the record carefully.

14. Following cases have been referred by learned representative of the applicant :-

1. AIR 1980 Supreme Court 840, The Managing Director, U.P. Warehousing Corporation and others... Appellants v/s Vijay Narayan Vajpayee... Respondent.

2. 2012 (2) All India Services Law Journal, 19 SC, Krushnakant B. Parmar.... Appellant v/s. Union of India & Anr.....Respondents.
15. Following cases have been referred by learned representative of non-applicant :-
1. (2011) 9 SCR 1, Union of India & Anr.Appellant v/s Arulmozhi Iniarasu & Ors.Respondents.
16. It has been argued by learned representative of the applicant that after working for the period of 120 days applicant was given the status of a temporary employee but he was removed from service by non-applicant without issuing any chargesheet & conducting any enquiry & providing any opportunity of defence. It has been further argued that notice of absence was given to applicant which was replied by him but instead of following the procedure of enquiry & providing opportunity of defence to the applicant, non-applicant has passed the order of dismissal which has resulted into failure of natural justice. It has been further argued that as the applicant was temporary employee at the time of dismissal non-applicant was under an obligation to follow the procedure laid under rule 9 of "The Railway Servants (Discipline & Appeal) Rules, 1968" hence, order of dismissal is liable to be set aside & applicant is liable to be reinstated with all consequential benefits. Reliance has been placed on the case reported in AIR 1980 Supreme Court 840, The Managing Director, U.P. Warehousing Corporation and others... Appellants v/s Vijay Narayan Vajpayee... Respondent & 2012 (2) All India Services Law Journal, 19 SC, Krushnakant B. Parmar.... Appellant v/s Union of India & Anr.....Respondents.
17. Countering the above argument it has been argued by the learned representative of the non-applicant that conditions of service of the applicant was to be regulated according to the conditions provided in the appointment letter wherein he has been shown to have been appointed as 'Awazee Bungalow Khalasi' & it has been provided in the conditions of appointment that in the event of absence, unsuitability or misbehaviour or in the absence of need of the applicant to continue his services, he will be removed from the service without intimation. It has been further alleged that applicant left the job without intimation & remained continually absent without leave of absence. It has been further argued that provision of the "The Railway Servants (Discipline & Appeal) Rules, 1968" does not apply in case of the applicant & a notice was given to him to explain his absence which was answered by him & finding the explanation submitted by the applicant to be false he was removed from service vide order dated 24.3.2006 which is just & proper. Reliance has been placed on the case reported in (2011) 9 SCR 1, Union of India & Anr.Appellant v/s Arulmozhi Iniarasu & Ors.Respondents.
18. Before I proceed to discuss the arguments advanced by either side it appears necessary to consider the conditions of appointment letter, content of notice sent to the applicant to explain his absence without intimation & the order of removal passed by the non-applicant. Content of notice to the applicant & order of his removal from service are as mentioned below:-
19. Notice sent to the applicant for his unauthorised absence reads as under :-

उत्तर पश्चिम रेलवे

सतर्कता विभाग
प्रधान कार्यालय,
जयपुर

रजिस्टर्ड डाक द्वारा

पत्रांक विज/2006/ऐवजी बंगला अधिकारी दिनांक 08/03/2006
श्री रामसिंह रावत, पुत्र श्री मंगलसिंह रावत,
ऐवजी बंगला खलासी, गाँव कालेडी, पो. कानाखाडी,
वाया— श्रीनगर, जिला—अजमेर पिन—305025

सूचना

विषय :- रेल सेवा से अनधिकृत रूप से अनुपस्थिति बाबत।

मुख्य कार्मिक अधिकारी/एच क्यू, उत्तर पश्चिम रेलवे, प्रधान कार्यालय, जयपुर के सूचना सं. ई (प्रका)/615/(बंगला खलासी) दिनांक 6/2/2003 के संदर्भ में आपने ऐवजी बंगला खलासी तदर्थ रूप से (अस्थाई तौर) वेतनमान रु. 2550-3200/- रु. 2550/- प्रतिमाह पर उप मुख्य सतर्कता अधिकारी/भण्डार, उ.प. रेलवे, प्र. का., जयपुर के अधीन दिनांक 06/02/2003 को कार्य ग्रहण किया था। उसके उपरान्त 120 दिन की अवधि पूर्ण करने के उपरान्त उप मुख्य कार्मिक

अधिकारी/एच क्यू. के कार्यालय आदेश सं. ई/प्र.का./रामसिंह रावत/बंगला खलासी/पी-फाईल दिनांक 04/15-03-2004 आपको अस्थाई पदवी दिनांक 6/6/2003 से स्वीकृत की गई।

दिनांक 13/11/2004 से बिना कोई सूचना दिये आप अनधिकृत रूप से अनुपस्थित हैं, जो कि गम्भीर अनुशासनहीनता है।

ऐसा प्रतीत होता है कि आप इस पद पर कार्य करने के इच्छुक नहीं हैं। आप कृपया दस दिनों के अन्दर स्पष्टीकरण दें कि क्यों न आपको रेल सेवा से हटा दिया जाये?

हस्ताक्षर अपठनीय

राकेश राजपुरोहित

उप मुख्य सतर्कता अधिकारी/भंडार

उ.प. रेलवे, प्र. का., जयपुर।

20.

The order of removal of the applicant from the service dated 24.3.2006 reads as under :-

उत्तर पश्चिम रेलवे

सतर्कता विभाग

प्रधान कार्यालय,

जयपुर।

रजिस्टर्ड डाक द्वारा

पत्रांक विज/2006/ऐवजी बंगला अधिकारी दिनांक 24/03/2006

श्री रामसिंह रावत, पुत्र श्री मंगलसिंह रावत,

ऐवजी बंगला खलासी, गाँव कालेडी, पो. कानाखाडी,

वाया — श्रीनगर, जिला—अजमेर पिन—305025

विषय :-रेल सेवा से अनधिकृत रूप से अनुपस्थिति बाबत।

इस कार्यालय के समसंख्यक पत्र दिनांक 08/03/2006 द्वारा आपको नोटिस जारी किया गया था कि आप दिनांक 13/11/2004 से बिना कोई सूचना दिए अनाधिकृत रूप से कार्य से अनुपस्थित हैं। यह कृत्य गम्भीर अनुशासनहीनता है। आपसे 10 दिन के भीतर स्पष्टीकरण मांगा गया था कि क्यों न आपको रेल सेवा से हटा दिया जाये।

आपने अपने पत्र संख्या निल दिनांक 17/03/2006 जो कि इस कार्यालय में दिनांक 20/03/2006 को प्राप्त हुआ, द्वारा अपना स्पष्टीकरण दिया है। आपके स्पष्टीकरण पर मैंने ध्यानपूर्वक विचार किया है एवं मेरी मदवार टिप्पणी निम्न प्रकार से है :-

पैरा -1 कथन तथ्यानुसार है, इसलिये कोई टिप्पणी नहीं।

पैरा -2 कथन तथ्यानुसार है, इसलिये कोई टिप्पणी नहीं।

पैरा -3 आपने लिखा है कि आपने 13 जनवरी 2004 तक लगातार कार्य किया जो कि ठीक नहीं है। आपने 12 नवम्बर 2004 तक कार्य किया था एवं उसके पश्चात यानि 13 /11 /2004 से आप बिना कोई सूचना दिए अनाधिकृत रूप से अनुपस्थित हो गये। न तो आपने अधोहस्ताक्षरकर्त्ता को उपस्थिति दी और न ही इस कार्यालय में।

पैरा -4 आपने उसके पश्चात न तो कार्यस्थल पर और न ही कार्यालय में उपस्थिति दी। न ही आपने अधोहस्ताक्षरकर्त्ता से सम्पर्क किया।

पैरा -5 यह भी आश्चर्यजनक है कि आपने दिनांक 13/11/2004 से अनुपस्थित रहते हुये 3 अगस्त 2005 को किसी अन्य अधिकारी के यहां उपस्थिति दी, जबकि आपको नियुक्ति अधोहस्ताक्षरकर्त्ता के बंगला खलासी के रूप में थी। न तो आपके कोई स्थानान्तरण आदेश जारी

हुये और न ही अधोहस्ताक्षरकर्ता ने कोई ऐसे आदेश दिये। अतः आप दिनांक 13/11/2004 से अनधिकृत रूप से अनुपस्थित रहे हैं।

पैरा -6 आपने उसके पश्चात् न तो कार्यस्थल पर और न ही कार्यालय में उपस्थिति दी। न ही आपने अधोहस्ताक्षरकर्ता से सम्पर्क किया।

पैरा -7 आप दिनांक 13/11/2004 से कार्यस्थल से अनधिकृत रूप से अनुपस्थित रहे हैं। आपको न आने के कोई भी आदेश जारी नहीं हुए हैं।

पैरा -8 आप दिनांक 13/11/2004 से कार्यस्थल से अनधिकृत रूप से अनुपस्थित रहे हैं। आपको कार्यस्थल पर न आने के कोई भी आदेश जारी नहीं हुए हैं।

“आपको एवजी बंगला खलासी की भर्ती के समय पत्र सं. ई (प्रका)/615/1 (प्रका) (बंगला खलासी) दिनांक 6/2/2003 द्वारा यह स्पष्ट निर्देश दिया गया था कि आपकी भर्ती पूर्णतः तदर्थ है तथा तीन वर्ष की सेवा उपरान्त ही आप विधिवत स्क्रीनिंग के पात्र होंगे। अतः तब तक अधीनस्थ अधिकारी द्वारा भेजी जा रही त्रैमासिक कार्य रिपोर्ट संतोषजनक होने पर ही आपके कार्यकाल को आगे बढ़ाया जाएगा, यदि ये रिपोर्ट असंतोषजनक हुई अर्थात् आपके कार्य विमुख होने/अनुपस्थित रहने/दुर्व्यवहार करने व अयोग्य पाये जाने पर/और आवश्यकता न रहने पर /इन दशाओं में आपको रेल सेवा से हटा दिया जाएगा जिसके लिए आपको कोई पूर्व सूचना नहीं दी जाएगी। आपको इस शर्त के साथ भर्ती किया जाता है कि आप वर्तमान में अधिकारी के उपरान्त नए आगन्तुक अधिकारी के साथ कार्य करते रहेंगे, यदि वे ऐसा नहीं चाहेंगे तो आपको रेल सेवा से हटा दिया जायेगा”। इन शर्तों को आपने नियुक्ति आवेदन पत्र में स्वीकार भी किया था।

आपका स्पष्टीकरण किसी भी प्रकार से संतोषजनक नहीं है तथा सत्य से परे है। आपका कार्यस्थल से दिनांक 13/11/2004 से अनधिकृत रूप से अनुपस्थित रहना कार्य के प्रति विमुखता एवं गम्भीर अनुशासनहीनता है। अतः आप रेल सेवा में कार्य करने हेतु अयोग्य हैं। अतः आपको तुरन्त प्रभाव से रेल सेवा से एवजी बंगला खलासी पद से हटाया जाता है।

हस्ताक्षर अपठनीय

राकेश राजपुरोहित

उप मुख्य सतर्कता अधिकारी/भंडार

उ.प.रेलवे, प्र. का., जयपुर।

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु—

1. उप मुख्य कार्मिक अधिकारी/मुख्यालय/जयपुर।
2. वेतन लिपिक ।
3. सेवा पंजिका ।
4. वित्त सलाहकार एवं मुख्य लेखाधिकारी।

21. From the perusal of appointment letter it appears that applicant has been appointed as ‘Awazee Bungalow Khalasi’ of Sh. Rakesh Rajpurohit, Deputy Chief Vigilance Officer on 6.2.2003 for a period of three months. The appointment is very specific that he will work as ‘Awazee Bungalow Khalasi’ of Sh. Rakesh Rajpurohit. The conditions of appointment letter further provides that the appointment is purely on ad-hoc basis & after completion of three years service he will be entitled for screening & till then if quarterly report submitted by the concerned officer is found to be satisfactory his tenure will be extended further & if the quarterly report is unsatisfactory he will be removed from Railway Service without pre-termination. The unsatisfactory conditions consists of unwillingness from work/absence/misbehaviour or found to be unfit for work & cessation of work. The conditions of service further provides that after Sh. Rakesh Rajpurohit he will work with new officer & if the new officer does not so desire then he will be removed from service & the applicant will not be entitled to any alternate class IV post in the event of removal from service in the above circumstances.

22. The notice dated 8.3.2006 was given by Sh. Rakesh Rajpurohit, for whom the applicant was appointed as ‘Awazee Bungalow Khalasi’. The notice is regarding unauthorised absence of the applicant from the place of duty

which says that the applicant had joined the duty on 6.2.2003 as 'Awazee Bungalow Khalasi' & he was given 'temporary status' on 6.6.2003. The notice further says that he is absent without authority since 13.11.2004 which is a serious act of indiscipline & it appears from nature of his absence that he is not interested in further working. He has been directed to explain within 10 days as to why he should not be removed from Railway Service.

23. In reply dated 17.3.2006 against above notice applicant has alleged that he was given temporary status w.e.f. 6.6.2003 & he worked with Sh. Rakesh Rajpurohit till 13 January, 2004 & on 13.1.2004 Sh. Rakesh Rajpurohit told him not to come from tomorrow onwards & he will be summoned when required. In para 4 of reply he has alleged that after 13.1.2004 he contacted Sh. Rakesh Rajpurohit & he said that applicant will be taken in the service soon. Later on 8.8.2005 he was engaged by Sh. Rakesh Rajpurohit to work with Sh. O.P.Sharma, another officer who had come on transfer from Secanderabad where he worked for one & half months & again he was told that he will be called when required. He has further alleged in reply to notice that he was removed from service without reason on 13.11.2004 & later in September, 2005. In para 8 of reply of notice he has alleged that he has never been absent from duty & he has acted according to direction of Sh. Rakesh Rajpurohit, the officer who had given him notice of absence dated 8.3.2006.

24. It shall appear from perusal of conditions of appointment provided in appointment letter that applicant was to work continuously with Sh. Rakesh Rajpurohit only till the time Sh. Rakesh Rajpurohit was posted at North Western Railway, Jaipur & only after departure of Sh. Rakesh Rajpurohit, he was to work with any new coming officer if the new coming officer so desired & if the new coming officer did not desire to keep engaged with him applicant was to be removed from service. This was one condition of engagement of applicant according to his appointment letter beside other conditions. In light of above conditions of appointment there was no occasion for the applicant to remain absent from duty at the bungalow of Sh. Rakesh Rajpurohit & there was no occasion for Sh. Rakesh Rajpurohit to ask the applicant not to come on duty after 13.1.2004. Sh. Rakesh Rajpurohit in his order of termination rebutting the contention of applicant he has said that applicant has worked on his bungalow till 12 November, 2004 & from 13 November, 2004 till the date of show cause dated 8.3.2006 applicant remained continuously absent without information to office or to Sh. Rakesh Rajpurohit. Sh. Rakesh Rajpurohit has further alleged that applicant was never ordered to work with Sh. O.P.Sharma & he is not aware about such working of the applicant. Against para 6 of notice he has denied specifically that applicant neither contacted Sh. Rakesh Rajpurohit nor reported in the office hence, there was no question of assurance given to applicant that he will be soon taken on duty. Against para 5 of explanation Sh. Rakesh Rajpurohit has specifically denied that applicant has worked with Sh. O.P.Sharma because the applicant was never transferred to work anywhere except with Sh. Rakesh Rajpurohit. He has further reiterated that applicant remained absent since 13.11.2004. Sh. Rakesh Rajpurohit has further mentioned in para 7 of his order of removal that applicant remained absent since 13.11.2004 without authority & there was neither any order to work with Sh. O.P.Sharma nor he was ordered to discontinue the work with Sh. O.P.Sharma as alleged by applicant. He has denied specifically that applicant was never ordered not to come on duty. Based on above assessment & referring to conditions of appointment given in appointment letter order has been passed by him regarding removal from service.

25. From perusal of order of removal it is evident that there was no order to work with Sh. O.P.Sharma & there is no evidence on record to support the contention of the applicant that he worked with Sh. O.P.Sharma. Further, the applicant has not explained any satisfactory reason for his absence looking into the denial of Sh. Rakesh Rajpurohit that applicant never contacted him after 13.11.2004. From perusal of cross-examination of the applicant it is evident that applicant has admitted that he is aware of the conditions of appointment given in appointment letter & he was appointed subject to conditions mentioned in appointment letter. Applicant has further admitted that according to conditions of appointment letter he could be removed from service anytime without notice within the period of 3 years from the date of his appointment. He has further admitted that he was removed from service on 13 January, 2004 & not from 13.11.2004 & he had not made any complaint to higher authorities against his removal from service. He has further admitted that he had made no complaint against non-payment of salary for one & half month period during which he has alleged to have worked with Sh. O.P.Sharma. It is pertinent to mention that he has specifically admitted in page 3 & 4 of cross-examination that railway had given him notice after laps of nearly one & half year from the date of his absence which shows that contention of the applicant that he worked with Sh. O.P.Sharma is false. He has further admitted that he had not submitted any representation or appeal before higher authorities of railway against his order of removal dated 24.3.2006 from the service. Applicant has neither filed any documentary proof of working with Sh. O.P.Sharma nor has produced Sh. O.P.Sharma in evidence that applicant had worked with him. He has also not produced any co-worker to support his allegation that he worked with Sh. O.P.Sharma. His explanation of absence in reply to the notice appears to be false & contradicting from his own oral statement.

26. From cross-examination of witness for non-applicant Sh. Lakhpat Singh Chaudhary, Deputy Chief Vigilance Officer it is evident that he has admitted that Sh. Ramsingh Rawat, applicant has been removed from service on the basis of conditions given in appointment letter & rule of natural justice was followed in adopting the procedure of his removal from service. The witness has alleged that notice dated 8.3.2006 given to applicant was opportunity extended to him to explain his absence which was replied by him & keeping in view the reply made by applicant order of removal from service was passed. He has admitted that before removal of applicant from service enquiry was not conducted but provisions contained in appointment letter was followed & order of removal was passed accordingly.

27. Referred by learned representative of the applicant, in AIR 1980 Supreme Court 840, *The Managing Director, U.P. Warehousing Corporation and others... Appellants v/s. Vijay Narayan Vajpayee... Respondent, Sh. V.N. Vajpayee*, respondent was an employee of corporation on the post of Warehouseman. He was posted at Kanpur Warehouse at the relevant time. There was a complaint of theft, misappropriation of Stocks & various other irregularities against the respondent. A preliminary enquiry was held by Managing Director of the corporation & charges were framed against him & serviced on 23.11.1960 to submit explanation by respondent & to indicate evidence, if any, to be adduced by him in defence. On receipt of charge sheet respondent requested Managing Director to furnish certain document which was given to him. After receipt of documents respondent submitted his explanation on 19.1.1961 wherein he specifically demanded that he wanted to cross-examine certain witnesses mentioned by management. He further gave the particular of other witnesses he wanted to examine them in defence. Thereafter, no further step was taken regarding enquiry or opportunity to applicant to cross-examine the witness of management & further produce his own witnesses in defence. On April, 14, 1961 Managing Director passed the order of dismissal of respondent from service w.e.f. the date of suspension. Later on respondent was further required to remit a sum of Rs. 549.61 due to corporation on account of cost of certain commodities alleged to have been misappropriated by respondent on account of short realisation of storage charge by him. Aggrieved by order of termination respondent filed writ petition before Hon'ble High Court under Article 226 praying for a writ of certiorari to quash the order of dismissal on the ground that it was violative of the principle of natural justice because he had not been given opportunity to cross examine the witnesses and establish his innocence. He further prayed for a direction that the Corporation be restrained from recovering the sum of Rs.549.61 from him. Countering the above contention it was stated by appellant that certain material facts had been admitted by respondent during preliminary enquiry & he had also cross-examined the witnesses. It was further submitted that there was no regulation provided for conducting an enquiry in a particular manner and, therefore, the remedy of respondent was by way of a suit & he had no locus standi to invoke the extraordinary jurisdiction of the court under Article 226 of the Constitution. It was further pleaded that writ petition was time barred. The writ petition was dismissed by Hon'ble Single Judge of the High Court holding that corporation was not required to act in quasi-judicial manner & that the provisions of Article 311 of the Constitution were not applicable in the facts of the case. Aggrieved by the order of the Hon'ble Single Judge respondent preferred special appeal before the Hon'ble Division Bench wherein judgement of the Hon'ble Single judge was reversed & held that corporation was required to act in quasi-judicial manner. The Hon'ble Division Bench remanded the case for a fresh decision by Hon'ble Single Judge on merits. The Hon'ble Single Judge by his judgement dated 7.12.66 allowed the writ petition & quashed the order of dismissal of respondent but refused to grant an injunction against realisation of Rs.549.61 from the respondent, holding that principle of natural justice had been violated. The appellant corporation again preferred an special appeal to the Hon'ble Division Bench which was dismissed on 6.8.1969. The appellant further preferred appeal against order of Hon'ble Division Bench before Hon'ble Supreme Court. In para 14 of the judgement it was held by Hon'ble Supreme Court, "..... A regular departmental enquiry takes place only after the charge-sheet is drawn up & served upon the delinquent & the latter's explanation is obtained. In the present case no such enquiry was held & the order of dismissal was passed summarily after perusing the respondent's explanation. The rules of natural justice in this case were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court." Accordingly, the order of the the Hon'ble Division Bench of the High Court with regard to quashing of the order of dismissal of the respondent on the ground of its being invalid was upheld but direction for payment of full back wages was set aside. With above medication the appeal was dismissed.

28. Referred by learned representative of the applicant, in 2012 (2) All India Services Law Journal, 19 SC, *Krushnakant B. Parmar.... Appellant v/s Union Of India & Anr.... Respondents*, it has been held by Hon'ble Supreme Court that if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that absence is wilful & in absence of such finding the absence will not amount to misconduct. In the case of *Sh. Ram Singh Rawat* it is evident from his own evidence that his contention that he was not absent has been proved to be untrue.

29. Referred by non-applicant, in (2011) 9 SCR 1, *Union of India & Anr v/s Arulmozhi Iniarasu & Ors*, the respondents were engaged as part time contingent casual labourers purely on temporary basis in the office of Commissioner of Central Excise in the year 1999. According to offer of appointment, they were required to work on the basis of need of the office for which they were to be paid @ Rs.10/- per hour with no guarantee as regards minimum number of hours in a month. In para 7 of the appointment letter it was stated that appointment letter would not confer any right to claim any permanent post in the department as also any automatic right to be considered for selection to any permanent post in the department. Most of the respondent were in the continuous employment for the periods ranging from 8 to 14 years. It was contention of the appellant that none of the respondents fall within the preview of 1993 Scheme, which was notified on 10.9.1993 for conferring temporary status & regularisation of casual workers, who were in employment on 1.9.1993. All the respondents were engaged after 1.9.1993.

30. On 2.5.2005, in compliance with directions issued by Ministry of Finance appellant dispensed with the services of all such casual labourers & handed over the work which was carried out by them to contractors. Aggrieved by the action of appellant, respondents approached the tribunal preferring an original application for regularisation of their services which was dismissed by the tribunal. Respondents preferred writ petition before the Hon'ble High Court against the order of tribunal. The writ petition was allowed by Hon'ble High Court with direction to appellant to

consider the matter afresh in light of circular dated 11.12.2006 issued by Personnel Department & circular issued by Ministry of Finance dated 7.9.2007 & 13.9.2007. These circulars were issued pursuant to the order of the Hon'ble Supreme Court in case of Secretary, State of Karnataka & others v/s Uma Devi & others, *inter-alia* directing the Union of India, State Governments & their instrumentalities to take steps to regularise, as one time measure, the services of such irregularly appointed employees, who are dully qualified in terms of statutory Recruitment Rules for the post & who have worked for 10 years or more in dully sanctioned post but not under cover of orders of Courts or Tribunals. According to direction of Hon'ble High Court, the Chief Commissioner of Central Excise found that respondents were not eligible for regularisation of their services as they did not satisfy the criteria laid down in the case of Secretary, State of Karnataka & others v/s Uma Devi & others & office memorandum dated 11.12.2006 issued by Department of Personnel as indicated above.

31. On 14.1.2008 Chief Commissioner of Central Excise, Chennai Zone, issued a notice inviting applications for recruitment of 40 persons to the post of Sepoy (General Central Service Group D). The prescribed age limit for general candidate was 27 year , for SC/ST 32 year & for OBC 30 years on 1.1.2008. There was further age relaxation of 5 years & 3 years for SC/ST & OBC candidates respectively. Initially respondents were permitted to participate in the recruitment process but later on realising that SC/ST & OBC candidates has crossed the prescribed age they were not called to participate in further selection process & there applications were rejected as age barred. Aggrieved by the above decision of the department refusing age relaxation respondents filed original application before the tribunal. The tribunal directed the appellants to consider the case of respondents for appointment by relaxing the prescribed age-limit, if necessary, in view of long service rendered by them. In giving such direction the tribunal was of the view that the ratio of decision of Hon'ble Supreme Court in case of Nagendra Chandra & Ors. V/s State of Jharkhand & Ors. (2008 1 SCC 798) was applicable to the case of the respondents & therefore, they were entitled to same relief as was granted in Nagendra Chandra's case. Aggrieved by the order of the tribunal appellants preferred writ petitions before the Hon'ble High Court which was disposed with modification of the order of the tribunal to the effect that relaxation in the age-limit could be upto 3 years & 5 years for OBC & SC/ST candidates respectively. Appellants further preferred appeal before the Hon'ble Supreme Court against the order of Hon'ble High Court.

32. The question before the Hon'ble Supreme Court was whether in the matter of relaxation of age-limit prescribed as eligibility criteria for appointment on a particular post, any principle of law has been laid down in the decision of Hon'ble Supreme Court in Nagendra Chandra's case? If so, whether it could be applied to the facts of the present case for directing the relaxation in age-limit?

33. Referring to first part of the question it was observed by Hon'ble Supreme Court in para 13 of the judgement as under:-

“.....In the said decision it has clearly been held that the courts are not expected to issue any direction for absorption/regularisation or permanent continuance of temporary, contractual, casual, daily wagers or adhoc employees merely because such an employee is continued for a long time beyond the term of his appointment. It has also been held that such an employee would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. Therefore, in our opinion, the said observation cannot be said to be an exposition of general principle of law on the point that a long length of service, dehors the relevant recruitment rules for the post, is a relevant factor for waiver or relaxation of any eligibility criterion, including age-limit for further regular selections for the post. Obviously, the observation general in nature was made by this Court in exercise of its jurisdiction under Article 142 of the Constitution of India and, therefore, cannot be treated as a binding precedent. It has to be confined to the peculiar facts of that case.”

34. It has been further held by Hon'ble Supreme Court in para 14 of the judgement that respondents were engaged as part time contingent labourers for doing all type of work as may be assigned to them by the office which was need based for which they were to be paid on hourly basis. It has been further observed that nowhere it has been stated that they were recruited or ever discharged the duties of a 'sepoy' for which process of recruitment was initiated vide notice dated 14.1.2008. It has been held by Hon'ble Supreme Court at the end of paragraph 14 as under :-

“.....in our opinion, the engagement of the respondents as casual labourers even for considerable long duration did not confer any legal right on them for seeking a mandamus for relaxation of age-limit. We have no hesitation in holding that Nagendra Chandra's case (supra) has no application on facts in hand and the impugned direction by the Tribunal, as affirmed by the High Court based on the said decision, was clearly unwarranted.”

35. Referring to the terms & conditions of appointment letter issued to the respondents by appellant it has been observed by Hon'ble Supreme Court in para 20 of the judgement as under :-

“It is plain from the terms of the letter of appointment that the respondents were told in unambiguous terms that their appointments were temporary and would not confer any right to claim any permanent post in the department. It is not the case of the respondents that at any point of time, during their engagements with the appellants, a promise was held out to them by the appellants that they would be absorbed as regular employees of the department. In fact, no such promise could be held out in ivew of the Government O.M. dated 7th June, 1988 banning the employment of

persons in regular posts.” Accordingly, the appeal was allowed by Hon’ble Supreme Court & judgement of the Hon’ble High Court was set aside.

36. From perusal of decisions in AIR 1980 Supreme Court 840, *The Managing Director, U.P. Warehousing Corporation and others... Appellants v/s Vijay Narayan Vajpayee... Respondent & (2011) 9 SCR 1, Union of India & Anr v/s Arulmozhi Iniarasu & Ors*, referred by learned representative of the applicant & respondent respectively it is apparently clear that in case of ‘The Managing Director, U.P. Warehousing Corporation and others v/s Vijay Narayan Vajpayee’ charge-sheet was issued to the respondent which was replied by him by submitting his explanation & he had also given the list of witnesses to be cross-examined by him & the list of witnesses to be produced by him in defence but without adopting any enquiry proceeding & without giving opportunity to the respondent to defend himself order of dismissal was passed by the Managing Director in utter violation of principle of natural justice hence, order of dismissal was set aside. No benefit can be given to the applicant from the decision of ‘The Managing Director, U.P. Warehousing Corporation and others v/s Vijay Narayan Vajpayee’ because fact & circumstances of the case does not fit to the case of applicant Sh. Ramsingh Rawat. Shri V.N.Vajpayee was a regular employee working on the post of warehouseseaman governed by the service conditions of the corporation. There was no special condition of service provided for Sh. V.N.Vajpayee as provided in appointment letter of Shri Ram singh Rawat. When charge-sheet was served on Sh. V.N.Vajpayee then enquiry was mandatory, hence finding in the case of shri v.N.Vajpayee cannot be applied to the case of shri Ram singh Rawat.

37. It has been argued by learned representative of the applicant that Rule 9 of ‘The Railway Servant (Discipline & Appeal) Rule, 1968’ applies to the applicant & he will not be governed by the conditions of appointment letter. Countering the above argument it has been argued by the learned representative of the non-applicant that ‘The Railway Servant (Discipline & Appeal) Rule, 1968’ does not apply to the case of applicant & terms of appointment letter will govern the service condition of the applicant until he acquires the status of regular employee which was to take place only after screening of the applicant after the expiry of a period of three years. In support of his argument learned representative of non-applicant has placed reliance on the case reported in (2011) 9 SCR 1, *Union of India & Anr v/s Arulmozhi Iniarasu & Ors*. Looking into the argument of both the parties it is necessary to examined whether ‘The Railway Servant (Discipline & Appeal) Rule, 1968’ is applicable to the applicant as argued by his learned representative. Referred by learned representative of non-applicant Chapter 17, page 359 of Railway’s Establishment Rules & Labour Laws, 1993 contains the provision relating to ‘Discipline & Appeal Rule, 1968’. In its application it has been mentioned as given below :-

“APPLICATION”

These rules shall apply to every Railway servant but shall not apply to ----

- (a) Any member of the All India Services;
- (b) Any member of the Railway Protection Force as defined in the Railway Protection Force Act, 1957;
- (c) Any person for whom special provision is made, in respect of matters covered by these rules by or under any law for the time being in force or by or under any agreement entered into/by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

The President may, by order, exclude any class of Railway servants from the operation of all or any of these rules.”

38. The learned representative of non-applicant has repeatedly referred to para (c) of the “application” & submitted that the case of applicant is covered by para (c) & special provision has been provided to deal with the applicant in appointment letter itself. From perusal of appointment letter as mentioned above it is clearly evident that till the expiry of the period of 3 year when screening of the applicant is to take place he is necessarily required to be governed by the terms of appointment letter. To continue his services, it is the terms of the appointment letter which requires a quarterly report in relation to applicant that he is satisfactorily performing his work & can be continue for the next quarter. From perusal of the decision of the Hon’ble Supreme Court in *Union of India & Anr v/s Arulmozhi Iniarasu & Ors* also it is clear that appointment letter is an effective legal instrument to deal with the affair of an employee based on the terms of conditions of the service mentioned therein. Applicant has failed to demonstrate with reason that on what ground Rule 9 is applicable in relation to the applicant & why the terms & conditions of appointment letter are not attracted to deal with him in event of his unauthorised absence from place of duty. Accordingly, I am of the view that terms & conditions of appointment letter are applicable to the applicant wherein it has been provided that he may be removed from service without notice. Applicant has been given opportunity to explain his absence vide notice dated 8.3.2006 which has been replied by him. His reply has been proved to be false as discussed above. Dissatisfied with the explanation applicant has been removed from his post by competent authority. In the facts & circumstances of the case it cannot be said that there has been violation of principle of natural justice. Based on above discussion, I am of the view that decision of Hon’ble Supreme Court in *Union of India & Anr v/s Arulmozhi Iniarasu & Ors* is applicable in the facts & circumstances of the present case & argument of the learned representative of applicant is not sustainable that there has been failure of natural justice by not following the provision of Rule 9 of ‘The Railway Servant (Discipline & Appeal) Rule, 1968’.

39. Based on above discussion, I am of the view that applicant has failed to prove that action of the management of North Western Railway, Jaipur terminating the services of Sh. Ram Singh Rawat, Ex-Awajee Bungalow Khalasi vide order dated 29.3.2006 is illegal & unjustified. Applicant is not entitled to any relief. His statement of claim is dismissed accordingly.

40. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2556.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 29/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-12012/106/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 25.10.2017.

[No. L-12012/106/2012-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/29 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

Assistant General Manager,
State Bank of India, Zonal Office,
Admn Office, Sharda Chamber,
7th Floor, 386/2, Shankarseth Road,
Pune – 411 037.

AND

THEIR WORKMAN.

Shri K. P. Selvam,
1390, Bhimpura,
Galli No.6,
Pune – 411 001.

APPEARANCES:

FOR THE EMPLOYER	:	Shri M.G. Nadkarni, Advocate
FOR THE WORKMAN	:	Mr. Umesh Vishwad, Advocate

Mumbai, dated the 27th July, 2017.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12012/106/2012 – IR (B-I) dated 09.05.2013. The terms of reference given in the schedule are as follows :

“Whether the action of the management of State Bank of India, Zonal Office, Pune in terminating the services of Shri K. P. Selvam w.e.f. 16.1.2012 is legal and justified ? If not, to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives. Second party workman filed statement of claim Ex.6. According to the concerned workman, he was working with the first party bank since 1981 as a Sweeper. He has worked continuously from 1981 to 16.1.2012 with the first party bank. He was doing the work of cleaning and sweeping the premises of Zonal Office Pune and the officers’ quarters of the first party bank under direct control and supervision of the first party bank. His work is regular and perennial. The first party bank was making payment to him. As such there is direct employer-employee relationship between first party bank and second party workman.

3. According to the second party workman, a group of workmen raised the industrial dispute against the management of first party bank, Mumbai for non-absorption of workmen engaged through contractors in services of the first party bank. The agreement was arrived at and the contract workers were absorbed in the service of Central office and Mumbai Main Branch of the first party bank. However, the first party bank has failed to absorb the contract employees working in Pune and were discriminated in same situation. Therefore, the union namely Thekedar Kamgar Sangh has made demand of absorption of second party workman and other workers. The said union has filed writ petition bearing No. 6247 of 1998 before Hon’ble Bombay High Court. The said petition was disposed of in the year 2006 in view of law laid down in case of Steel Authority of India. Since 1998, the first party bank has stopped paying wages to the second party workman through the contractor and has started direct payment to the second party workman. There is no contractor since 1998 and the wages were directly paid by Pune Zonal office of the first party bank. Even after disposal of the said writ petition the second party workman was in service and wages were paid to him directly by the first party bank.

4. It is contention of the second party workman that He was in continuous service and had put continuously 240 days and more continuous service in every completed year of the service. However, the first party bank has terminated the services of the second party workman without following the procedure laid down in section 25-F of I.D. Act, 1947. Therefore the said termination is illegal, improper, arbitrary and unjust. It also amounts to unfair labour practices. The second party workman is therefore asking to declare that the termination of his services by the first party bank is illegal. He is also asking for re-instatement with continuity of service and all other consequential benefits from the date of termination till actual date of re-instatement along with interest and cost.

5. First party bank has resisted the claim by filing written statement Ex.7. According to the first party bank, the bank had engaged the contractor named M/s. Golden Enterprises since June 1981 who was entrusted with the job of house-keeping at the Zonal office, located at East Street, Gulmohar, Pune and also at the bank’s residential quarters namely Madhuban Bank House and Ashirwad Bldg. at Nagar Road, Pune. The bank was making payment to the contractor for the service rendered to the bank and the contractor was in turn effect the payment to the workers engaged by him for carrying out the job given to him by the bank. The said contractor abandoned the contract in November 1998 and ran away. The bank terminated the contract with M/s. Golden Enterprises sometimes in 1999 – 2000. However, with reference to the letter and spirit of the order of Hon’ble Bombay High Court dated 21.3.2006, the bank continued to engage the contract labours for doing the house-keeping jobs at the bank premises. Bank used to give money to Shri Selvam, the Supervisor against the production of the bills. Subsequently, there was inter-se dispute and the contract labours requested bank to pay money directly to them. Accordingly, the arrangement was worked out whereby Shri Selvam used to submit bills and bank credited the amount to the account of each contract labour.

6. It is also contention of the first party bank that on 10.9.2010 the bank published tender notice in local newspaper for maintenance and house-keeping of the banks premises. The bank also suggested the contract labours to form a society, partnership firm or a company for participating in the tender process. Contract labours did not pay heed to the suggestion made by the bank. The tender process was completed on 16.12.2011 and the contract for maintenance and house-keeping of the bank premises was awarded to contractor who had quoted the lowest rates. The new contractor displayed the notice on the bank’s notice board stating that he was given contract for maintenance and house-keeping of the banks premises and invited those who were interested to work with him to approach him. However, the concerned workman and other workers did not avail this opportunity.

7. It is also contention of the first party bank that there is no employer-employee relationship between the bank and concerned workman. The tribunal has no jurisdiction to adjudicate the dispute in question. Even as per order in writ petition bearing No. 6247 of 1998 of Hon’ble Bombay High Court, the concerned workman did not approach the competent authority to get the matter referred to tribunal for adjudication and as such dispute referred for adjudication in the present reference has been raised belatedly. It is quite stale. The reference is not maintainable on that ground.

8. According to the first party bank, the concerned workman was engaged by the contractor named M/s. Golden Enterprises. The bank was making payment to the said contractor who in turn was effecting the payment to the workmen engaged by him and therefore the claim of concerned workman that He was engaged by the bank is not maintainable. It is, thus, contention of the bank that it has not discriminated the contract employees working at Pune and therefore the claim of the workman is completely untenable.

9. It is also contention of the first party bank that provisions of section 25-F of I.D. Act, 1947 are not applicable in the factual matrix of the case since the service of the concerned workman automatically came to an end after new contractor was engaged by the bank after duly following tender process.

10. It is then contention of the first party bank that the settlement / agreement that might have been reached at Mumbai has no relation whatsoever with the present dispute and the workman concerned cannot base his claim on the basis of settlement entered into in a different case. On this premises, the first party bank has sought rejection of the reference.

11. Following issues are framed at Ex.8. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the reference is maintainable ?	Yes
2.	Whether there exists employer-employer relationship between the first party bank & concerned workman?	No
3.	Whether the action of the management of State Bank of India in terminating the services of Shri K. P. Selvam w.e.f. 16/01/2012 is legal and justified ?	Yes
4.	If not, whether the concerned workman is entitled to be reinstated in the services of first party with continuity of service and all other consequential benefits ?	No
3.	What Order ?	As per final order

Reasons :

Issue No. 1 :

12. The Learned Counsel for the first party bank submitted that admittedly the union namely Thekedar Kamgar Sangh has made demand of absorption of second party workman and other workers. The said union has filed writ petition bearing No. 6247 of 1998 before Hon'ble Bombay High Court. The main prayer of the petitioner was for issuance of writ of mandamus to the bank for regularizing the services of the concerned workers in the banks service. He submits that the said writ petition was disposed of by the Division Bench of Hon'ble Bombay High Court vide order dated 9.3.2006. In the said order the Hon'ble Bombay High Court made it clear that in view of law laid down by the Hon'ble Supreme Court of India in Steel Authority of India & Ors. V/S. National Union Waterfront Workers & Ors., the relief claimed in the petition cannot be granted and that only remedy available to the petitioner was to seek a reference to the tribunal. Accordingly, the petitioners were given liberty to make necessary application to the competent authority within two weeks from the date of order and the competent authority was directed to make reference as expeditiously as possible and in any case within a period of two months from the receipt of application of the petitioners. Submission is to the effect that the petitioners in the writ petition did not approach the competent authority to get the matter referred to the tribunal for adjudication within time. The contract labours of M/s. Golden Enterprises filed industrial dispute before the Labour Commissioner, Pune through Zilla Mazdoor Sangh vide their letter dated 23.12.2011. As such the dispute referred for adjudication in the present reference is belated i.e. after about 7 years from the date of order of the Hon'ble Bombay High Court. In view of this the submission is that the reference is not maintainable.

13. The Learned Counsel for the first party bank seeks to rely on the decision in case of Nedungadi Bank Ltd. V/S. K.P. Madhavankutty & Ors. 2000 (II SCC 455) to submit that the power of the appropriate government to exercise its powers under section 10 of the I.D. Act, 1947 is to be exercised reasonably and in a rational manner. There appears to be no rational basis on which the Central Govt. has exercised the powers in this case after a lapse of about 7 years of the order of the Hon'ble Bombay High Court. As such the dispute is stale and could not be the subject matter of the reference under section 10 of the I.D. Act, 1947.

14. He also seeks to rely on the decision in case of Reserve Bank of India V/S. Gopinath Sharma & Anr. 2006 (6 SCC 221) to submit that delay of 4 years in raising the dispute even after re-employment of the most of the workmen was held to be fatal.

15. He then seeks to rely on the decision in case of State of Karnataka & Anr. V/S. Ravi Kumar 2009 III LLJ (206 SC) to submit that 14 years delay to challenge the termination was stale reference and the reference ought to have been rejected on the ground alone.

16. However, in view of the facts of the present case it is to be seen whether the second party workman and other workers were diligent in raising the dispute before competent authority. We have document at Page 2 of list of document dated 11.3.2016. It is a copy of the letter dated 31.5.2006 (Ex.15) addressed to the Dy. Commissioner of Labour, Pune requesting him to intervene in the dispute and making reference within the time prescribed by the Hon'ble Bombay High Court. That would show that Thekedar Kamgar Sangh has made an application for making the reference within time prescribed by the Hon'ble Bombay High Court.

17. So far contention go, it is also a contention of the second party workman that even after the disposal of the said writ petition second party workman was in service and the wages were paid by the first party bank to him directly. As per his contention, the first party bank has terminated the services of the second party workman and as such the dispute was raised by the second party workman for regularization of the services of the concerned workman. It is the submission of the second party workman that the reference has not been arisen out of the demand of the union but the said reference has arisen out of the demand of the individual workman. The demand is not for regularization but the demand is for re-instatement of service. In view of these facts, it can be said that the individual workman has made the demand for regularization of his service and the reference has arisen out of his demand. Even before that in 2006 it is the union who has made application to the Dy. Commissioner of Labour, Pune requesting him to intervene into the dispute and make the reference within the time prescribed by the Hon'ble Bombay High Court. The said letter dated 31.5.2006 is at Ex.15. Therefore it can be said that the union was diligent in making the reference but then subsequently the demand is made by the individual workman for re-instatement and not for regularization. It cannot be said therefore that the reference is belated or otherwise it is stale and not maintainable. This point is therefore answered accordingly in negative.

Issue No.2 & 3:

18. This is the main contentions issue. At the first brush I would observe that admittedly M/s. Golden Enterprises was engaged by the bank as a contractor since 1981 for doing house-keeping at Pune Zonal office and bank's quarters at Pune. In his evidence also the second party workman has stated that he has joined the services in 1998. He then admits that M/s. Golden Enterprises has abandoned the contract in November 1998 and the trade union namely Thekedar Kamgar Sangh has filed writ petition bearing No. 6247 of 1998 on behalf of the contract workers in the Hon'ble Bombay High Court. Admittedly, in the writ petition they have made averments categorically that they have been employed by M/s. Golden Enterprises. In para 3(a) of statement of claim it is stated that they were on the muster of M/s. Golden Enterprises. It is admitted that they were not under the disciplinary control of the bank. Even it is admitted that they were not getting the facilities as available to the other bank employees. In view of above categorical and clear admission, the second party workman involved in the present reference cannot take a contradictory and inconsistent plea and cannot claim employer-employee relationship with the first party bank.

19. Even then the Learned Counsel for the second party workman submitted that after termination of the contract in between the first party bank and M/s. Golden Enterprises, second party workman was continued in service and the workers were directly paid by the bank at the same daily wages rate which was paid by the contractor. Submission is to the effect that the contract workers of M/s. Golden Enterprises were engaged by the State Bank of India and therefore they cannot be treated as contract employees because the contract of the contractor M/s. Golden Enterprises with the bank was cancelled and since cancellation of the contract they were continued to be in the service which would show that first party bank was the principal employer.

20. In this respect, if we see the evidence of the concerned workman, He admits that in the writ petition it was categorically shown that the contract labours were employed by M/s. Golden Enterprises and they are working on behalf of the M/s. Golden Enterprises in the premises of bank at Pune. Admittedly, in the statement of claim in para 3(a), He and other workers were shown on the muster of M/s. Golden Enterprises. It is admitted by him that before 1998 M/s. Golden Enterprises use to make payment to them. He even admits that He and other workers were not under the disciplinary control of the bank. Admittedly they were not getting the facility as available to the other bank employees. In view of this it can be said that the concerned workman being the employee of the contractor, the ultimate supervision and control was of the contractor.

21. In this respect the evidence has come on record that one Shri Selvam used to submit the bills in respect of work of concerned workman and other workers and then the bank used to credit the amount in the account of each of the contract labour. The question is whether the said arrangement which was worked out is sufficient to show and establish the employer-employer relationship in between the concerned workman and the first party bank. When initially the concerned workman was engaged by the contractor and after termination of the contract in between the said contractor and the bank He has been continued with such arrangement in respect of payment of wages to him by the bank by depositing his wages directly in his account after the production of bills by the said Shri Selvam, then that would not be sufficient to say that first party bank being the principal employer was making payment of wages to the concerned workman. Merely because the amount was credited to the workman/s account under circumstances narrated

above does not in any way alter the factual position that the concerned workman was a labour contractor and not an employee of the bank.

22. I say so because there is well defined procedure in the bank for recruitment and employment in the bank is done by inserting advertisement, holding competitive test for the employment, selection procedure through merit etc. etc. No such procedure was adopted at the time of engagement of the concerned workman as a Sweeper. The fact remains therefore that He was a contract labour for doing the house-keeping job at the banks premises and therefore He continued to be a contract labour even after the contract between said contractor and bank was terminated somewhere in 1999-2000.

23. The Learned Counsel for the first party bank submitted that the bank continued to engage contract labours for doing the house-keeping jobs at the bank premises in view or order of Hon'ble Bombay High Court dated 21.3.2006 whereby the Hon'ble Bombay High Court in view of petition by the petitioners took out a motion for clarification of order passed on 9.3.2006 by the Hon'ble Bombay High Court and also protection till reference is made at the instance of the petitioners to the tribunal for adjudication. The Hon'ble Bombay High Court observed that they do not see any protection granted by the court which was sought to be continued but then the Hon'ble Bombay High Court observed that the contract labours employed by the bank should be continued subject to the requirements and by following statutory obligations including payment of wages etc. and they need not be dis-continued only because the petition has been disposed of. That would show that in view of this order passed by the Hon'ble Bombay High Court the concerned workman was continued in services as per the requirement and after cancellation of contract with first party bank and the contractor namely M/s. Golden Enterprises, the subsequent arrangement was made in respect of payment of wages of the concerned employees who were engaged by the contractor and therefore the payment was made to them by depositing the amount in their bank accounts on submission of the bills by one shri Selvam. That would again show that the concerned workman was not considered to be the employee of the first party bank. All the while He was continued to be contract labour even after the order of Hon'ble Bombay High Court till his services automatically came to an end.

24. Even then the Learned Counsel for the second party workman submitted that the employees were the employees of M/s. Golden Enterprises till that contract was not abandoned or cancelled. After cancellation of the contract in 1999-2000 M/s. Golden Enterprises ceased to be contractor and these employees were ceased to the employees of M/s. Golden Enterprises. He submits that Hon'ble Bombay High Court has not directed to keep contract employees of M/s. Golden Enterprises in service in orders passed on 19.1.1999 and 1.2.1999. Therefore the relation between the S.B.I. and M/s. Golden Enterprises as principal employer and the contractor came to an end and after cancellation of the contract in 1999-2000 the services of the employees employed by M/s. Golden Enterprises for performing the job of cleaning, sweeping, house-keeping of S.B.I. premises automatically came to an end. These employees were ineligible to work with S.B.I. as contract workers of M/s. Golden Enterprises. So after termination of contract of M/s. Golden Enterprises and S.B.I., by oral orders by S.B.I. the employees were appointed to carry out the house-keeping, cleaning, sweeping work and then since that date till the date of termination the concerned workman were employed continuously by S.B.I. They worked for 10 – 12 years continuously on the basis of said oral order of S.B.I. and therefore there exists employer-employee relationship in between bank and concerned employees.

25. This submission is other way round and is not acceptable. A definite stand was taken by the concerned employees in the WP No. 6247/1998 that they are employees employed by M/s. Golden Enterprises which has been given a contract of house-keeping of S.B.I., Pune, Regional Office Pune has been employing several workers for carrying out the same work. It would thus not lie in their mouth to take contradictory and inconsistent plea that they are the workmen of the principal employer i.e. bank. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea should not be allowed to be raised. Common law principle of estoppel waiver and acquaintance are applicable in the industrial adjudication. In the context the hand can be laid on decision in case of Steel Authority of India V/S. Union of India 2006 (12 SC 243) wherein in para 28 of the judgment it has been observed that such inconsistent plea is not permissible.

26. On going through the order of Hon'ble Bombay High Court in the said WP No. 6247/1998 it has been observed as follows:

“We have gone through the orders passed by this court on 19.1.1999 and 1.2.1999 and we do not see any protection granted by this court and as sought to be continued. Undoubtedly the contract labours employed by Respondent bank shall be continued subject to the requirement and by following the statutory obligations including the payment of wages etc. and they need not be dis-continued only because this petition has been disposed of.”

27. In view of these observations of Hon'ble Bombay High Court even after the termination of contract in between M/s. Golden Enterprises and the bank the concerned workmen were continued and were paid wages by the bank by depositing the wages in their respective bank accounts. That does not mean that the bank has orally appointed them as its employees on regular basis even without following the statutory procedure.

28. Learned Counsel for the concerned workman / union submitted that the bank was paying bonus to the concerned employees. He refers to Ex.17 to submit that the bank was making payment through bankers' cheque. Therefore the submission is that as per Section 10 of Payment of Bonus Act, the employer is bound to pay the bonus. Section 2(14) of Payment of Bonus Act defines employer and it says that in relation to any other establishment the person who or the authority which was the ultimate control over the affairs of the establishment and the managing agent is the employer. He submits that as per section 21(4) the principal employer is not liable to pay bonus, gratuity as wages does not include it. He is liable to pay only wages if the contractors fails to pay wages. Since S.B.I. has paid bonus to the concerned employees it can be said that S.B.I. has engaged concerned workman directly and the bank is the employer of the concerned workmen who are covered under the Payment of Bonus Act.

29. This submission is also not acceptable since in the decision in case of Indian Iron & Steel Co. Ltd. V/S. State of West Bengal & Ors. 2011 (4 LLM 158), Calcutta, it has been observed in para 20 of the judgment that,

“There is no warrant for the proposition that in every case where the bonus is paid to an employee, the same is an indicator of the employee being a regular employee. The company is an establishment in public sector. The provisions of bonus act would apply to it only if it satisfies the conditions mentioned in sub section (1) of section 20 thereof. If indeed the company was obliged to pay bonus to its regular employees and had in the process shared its profits with the contract labours by paying the bonus in terms of bonus act, the very action of extending benefits of the social welfare legislation to said labours would not change their status to regular employees of the company.”

30. Next submission of Learned Counsel for the concerned workman is that the contractor did not obtain necessary licence. In this respect also it is necessary to refer the observations in para 20 of the citation cited supra. It has been observed that if at all the contractor did not obtain the licence it would open to the authority concerned to take action against it under section 23 of CLRA Act but for that the company cannot be penalized and the contract labours employed by such erring contractor be thrust upon it. Non-obtainment of licence without anything more would not clothe the Respondent with any legal right to claim that they are the direct employees of the company and hence entitled to continue in service despite the contract with KNYCEE not being renewed.

In view of this legal position it can be said that even if the contract between the bank and the contractor namely M/s. Golden Enterprises was cancelled and could not be renewed that does not give right to the concerned employee / union to claim that they are direct employees of the bank.

31. Next submission of Learned Counsel for the concerned workman is that there is no documentary evidence to show that Shri Selvam was the contractor after the contract of M/s. Golden Enterprises was abandoned. He submits that before RLC the settlement of Minimum wages was reached between the bank and workman / union and the bank has accepted to pay the minimum wages to the concerned workman. In view of that the submission is that after the contract with M/s. Golden Enterprises was abandoned, it was the bank who paid the wages to the concerned employees by depositing the wages in their bank account and thereby the bank has accepted it to be the employer of the concerned workman.

32. It is no doubt true that there is no documentary evidence to prove that Selvam was submitting the bills on the basis of which the wages were deposited in the bank account of each workman. But then Selvam was one of the worker along with other employees. Even the workman himself has admitted in his cross-examination that due to inter-se dispute between the workers they requested the bank to make the direct payment and arrangement was worked out. In view of that it can be said that some arrangement was worked out in respect of payment to these workmen after the contract between the bank and M/s. Golden Enterprises was abandoned.

33. In view of this, it is the submission of Learned Counsel for the bank that the workmen concerned were continued to be engaged by K.P. Selvam as a contract labour after original contractor ran away and no wages were directly paid to them by the bank. In view of admission of the concerned workman that the arrangement was worked out after the inter-se dispute between the workers it can be very well said that the concerned workmen were paid wages directly in their bank account by way of this arrangement which was worked out. Therefore that will not give them the status of regular employees since initially they were engaged by the contractor and then there is no documentary evidence to show that the concerned workman was appointed by the bank.

34. It is then submission of Learned Counsel for the concerned workman that the concerned workman was doing the work of sweeping and cleaning under the direction, control and supervision of first party bank. He refers to copies of attendance register to submit that those registers are maintained by the bank and it bears the signatures of Waze, Kulkarni and Bhosale who are the bank officers. In view of this it is submitted that the bank officers were having control over the work carried out by the concerned employees.

35. In his cross examination witness Sudhir Ramchandra has denied the suggestion to the effect that the bank was having control over the work carried out by the concerned employees and that Mr. Jatar, Sudhir Pawar, Dube, Karkhanis were supervising the work and were allotting the work to the concerned employees. Even if some anxious consideration is given to this submission of Learned Counsel for the concerned workman then also it can be said that merely because the contract labour work is under the supervisions of officers of principal employer it cannot be taken

as evidence of direct employment under the principal employer. In the decision in case of International Airport Authority of India V/S. International Air Cargo Union and Anr. 2009 (13 SCC 374) it has been observed in para 54 of the judgment that,

“Exercise of some control over the activities of the contract labour while they discharge their duties as labours is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employee of the principal employer.”

36. In the light of above observations I hold that there does not exist employer-employee relationship between the first party bank and second party workman. But then it is submission of the Learned Counsel for the concerned workman that the concerned workman had worked for 240 days and continuously in every completed year of service and his services came to be terminated without following the procedure laid down under section 25 of I.D. Act, 1947. In this view the submission is that the said termination is illegal and improper.

37. This submission is also not acceptable since the fact remains that the concerned workman was engaged by the contractor and after termination of the contract his services came to an end.

38. For it is explicit from the evidence of Sudhir Jalanwar, the witness of the bank that on 10.11.2010 the bank published tender notice in local newspapers for maintenance and house-keeping of bank premises. The bank also suggested the contract labours to form a society, partnership firm or a company for participating in the tender process. Contract labours did not pay heed to the suggestion made by the bank. The tender process was completed on 16.12.2011 and the contract for maintenance and house-keeping of the bank premises was awarded to contractor who had quoted the lowest rates. The new contractor displayed the notice on the bank's notice board stating that he was given contract for maintenance and house-keeping of the bank's premises and invited those who were interested to work with him to approach him. However, the concerned workman and other workers did not avail this opportunity to work under the new contractor. The fact remains therefore that after termination of earlier contract the services of the concerned workman automatically came to an end.

39. In view of this, the Learned Counsel for the first party bank submitted that though concerned workman had worked for 240 days in a year, his appointment was not from the regular stream of appointment and therefore is not entitled for regularization. He seeks to rely on the decision in case of Dena Bank V/S. Ashraf Yalu Shaikh 2009 III CLR 426 to submit that since the appointment of the concerned workman was not from the regular stream of appointment they are not entitled to reinstatement but only compensation, as envisaged under section 25 of I.D. Act, 1947.

40. So far the submission of the concerned workman to the effect that first party bank has terminated his services without following the procedure laid down in section 25-F of I.D. Act, 1947, it can be said that there is no employer-employee relationship between the bank and workman and that the services of the workman automatically came to an end after the new contractor was engaged by the bank after following tender process. It is not therefore possible to accept the submission of Learned Counsel for the concerned workman that the termination is illegal on account that it was without following the procedure laid down in section 25-F of I.D. Act, 1947.

41. Realising this difficulty, Learned Counsel for the concerned workman submitted that by way of settlement, the similarly situated workmen and employees in Mumbai were absorbed in services of the bank and therefore the first party bank has violated the principles of equity before law and gave different treatment to some set of employees in Mumbai by neglecting section 12(3) and 18(3) of I.D. Act, 1947 and therefore the termination is illegal. The submission is again other way round. There is no evidence of such discrimination. If any such agreement has been reached then it has no relation with the present dispute. The present dispute is squarely covered by W.P. No. 6247/1998 and the same has to be dealt with in the light of order passed by Hon'ble Bombay High Court in the said writ petition. In view of that the concerned workman cannot base a claim on the basis of settlement entered into in a different matter under different circumstances.

42. Considering all these facts, I hold that action of management in terminating the services of concerned workman w.e.f. 6.1.2012 is legal and justified. The above issues are therefore answered accordingly as against each of them in terms of above observations.

Issue No. 4 & 5.

43. In view of my finding the above issues, the concerned workman is not entitled to be re-instated in the services of first party bank with continuity of service and other consequential benefits. He is not entitled to relief claimed. Thus order.

ORDER

Reference is rejected with no order as to costs.

Date: 27.07.2017

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2557.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक सौराष्ट्र के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 48/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-12012/26/2006-आईआर (बी-1)]

बी. एस. बिश्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Saurashtra and their workmen, received by the Central Government on 25.10.2017.

[No. L-12012/26/2006-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of August, 2017

INDUSTRIAL DISPUTE No. 48/2006

Between:

Sri T. Suresh Babu,
S/o T.S. Sekhar,
D.No.6-169, Balajinagar,
Simhachalam,
Visakhapatnam – 530029.

...Petitioner

AND

Sl. No.	As per reference	Substituted by order dated 3.3.2009 of this Tribunal on Memo dated 3.3.2009 filed by Present Respondent.
1	The Manager, State Bank of Saurashtra, D.No.29-2-16, Vattikuti Complex, Prakasaraopeta, jagadamba Centre, Visakhapatnam – 530003.	The Branch Manager, State Bank of India, Jagadamba Junction Branch, Prakasaraopeta, Visakhapatnam – 2.
2	The Asst. General Manager-III, State Bank of Saurashtra, Zonal Office, A-24, Shyam Gokul Swastic Society, C.G. Road, Navarangapur, Ahmedabad – 380 009. (Gujarat)	The Asst. General Manager, State Bank of India, Zonal Office / Regional Office, Balaji nagar, Siripuram, Visakhapatnam.

...Respondents

Appearances:

For the Petitioner : Sri S. Rama Rao, Advocate

For the Respondent : Sri M. RamdasAdvocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/ 26/2006-IR(B-I) dated 10.8.2006 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of State Bank of Saurashtra, Prakasarao Peta, Visakhapatnam in terminating the services of Shri T. Suresh Babu, Ex-Temporary Sub-Staff w.e.f. 1.8.2005 is legal and justified? If not, to what relief the concerned workman is entitled?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 48/2006 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

The Petitioner submitted that he was appointed as sub-staff with the 1st Respondent bank w.e.f. 7.9.2000. Initially he was paid Rs.50/- per day and later it was increased to Rs.75/-, Rs.90/-, Rs.125/- and Rs.130/- as on the date of termination. It is submitted that the Petitioner used to perform the duties of cleaning of office, fetching water, voucher stitching, filing of documents, cash bundling and routine messenger's job and his working hours are from 9AM to 9PM, everyday till the accounts tallied with the cash. Apart from these duties he was entrusted with dispatch and inward work since November, 2004 till termination. It is stated that due to chronic anemia and general weakness the Petitioner could not attend to his duties and he informed over phone about his absence and after one week he sent his father with sick certificate for grant of leave for 15 days. The Respondent No.1 did not accept the leave application and informed the father of the Petitioner to join duties after recovery. When the Petitioner reported to duty on 1.8.2005, he was informed by Respondent No.1 that he was discharged from service as his service was no more required. Then the Petitioner approached the Assistant Labour Commissioner (C), Visakhapatnam who conducted conciliation proceedings which ended in failure, and finally culminated the present reference. The Petitioner discharged his duties upto the satisfaction of his superiors and worked continuously from 2000 onwards i.e., 92 days in the year 2000, 286 days in 2001, 283 days in 2002, 281 days in 2003 and 268 days in 2004. The Respondent's management has not followed the principles of natural justice and terminated the services of the Petitioner. It is submitted that the workman is put to terrible mental agony due to lack of employment, and facing severe financial hardships. It is prayed to declare the action of the Respondents in terminating the Petitioner as illegal and unjustified and consequently direct the Respondents to reinstate the Petitioner into service with back wages, continuity of service and other attendant benefits.

3. Respondents filed their counter with the averments in brief as follows:

The Respondent while denying the averments of the claim statement, stated that the services of the Petitioner was occasionally utilized by Respondent No.1 on daily casual basis as and when ever work arise in the branch i.e., only for the purpose of shifting records, cleaning the Branch premises, etc.. The Petitioner was never appointed on permanent basis in any regular vacancy of the Bank. The Respondent Bank has forwarded the appointment of the Petitioner to the Head Office for appointment of Peon and it would not constitute appointment against a regular vacancy in the Bank. The Respondent No.1 has no authority to appoint anybody. The Petitioner has never sent any leave letter nor he was informed that his services are no more required on 1.8.2005 when reported. It is submitted that in all cases of daily wages, it is the settled legal position that the contract of employment commences in the morning of the day when he was engaged and ends in the evening. Further, daily wage workers are not entitled for any benefits that are available to regular employees. As such, the reference be rejected.

4. The Petitioner examined himself as WW1 and marked some documents as Ex.W1 to W4 in series in support of his claim. The management examined Sri Chamarthy Suryanarayana, the Branch Manager, Jagadamba Junction Branch as MW1, but no documents were marked in support of their claim.

5. Both the sides advanced their argument in support of their respective claim.

6. The Points for consideration are:

- I. Whether the action of the management of State Bank of Saurashtra, Prakasarao Peta, Visakhapatnam in terminating the services of Shri T. Suresh Babu, Ex-Temporary Sub-Staff w.e.f. 1.8.2005 is legal and justified?
- II. If not, to what relief the concerned workman is entitled?”

7. Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner was working as a sub-staff with the first Respondent with effect from 7.9.2000. Initially he was getting Rs. 50/- and there after his pay was increased to Rs.75/-, Rs. 90/-, Rs.125/- and Rs.130/- as on the date of termination. It is further contended that the Petitioner used to perform the duties of cleaning the office, fetching water, voucher stitching, filing of documents, cash bundling and doing routine messenger's job and his working hours are from 9AM to 9PM, everyday till the accounts tallied with the cash. Apart from these duties he was entrusted with dispatch and inward work since November, 2004 till his termination. But due to chronic anemia and general weakness the Petitioner could not be able to attend to his duties and he informed over phone about his absence and after one week he sent his father with sick certificate for grant of leave for 15 days. But, Respondent No.1 did not accept the leave application and informed the father of the Petitioner to join duties after recovery. When the Petitioner reported to duty on 1.8.2005, he was informed by Respondent No.1 that he was discharged from service as his service was no more required. It is also contended that MW1 in his evidence has admitted that as per the vouchers vide Ex.W4 series, the workman was working in the Respondents' bank for 240 days in a year and as per Ex.W1 Respondent No.1 has asked Respondent No.2 to avail the services of the Petitioner as a one third employee. Further MW1 has further admitted that the nature of duties which the Petitioner used to discharge are perennial in nature. MW1 has also admitted that similarly situated employees like the Petitioner are regularised as per the requirement of the bank. MW1 has also admitted that no notice has been served on the Petitioner before his termination. The Learned Counsel for the Petitioner contended that the admission of the management witness is sufficient to hold that without following due procedure, the Petitioner had been terminated from service and similarly situated employees like the Petitioner have been regularised in the Respondents' bank as per the requirement of the bank but the case of the Petitioner has not been considered. The duties of the Petitioner are perennial in nature and he has completed 240 days in a year during the time of his service in the Respondents' bank.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent contended that the Petitioner was occasionally utilised by Respondent No.1 on daily wage basis as and when work arises in the branch. The Petitioner was never appointed on permanent basis against any regular vacancy of the bank. The Respondent bank has forwarded one letter regarding the appointment of the Petitioner as a Peon to the head office and it was not constituted as appointment against the regular vacancy in the bank. Respondent No.1 has no authority to give appointment to anybody. The Petitioner has never sent any leave application nor he was informed that his services are no more required on 1.8.2005 when he reported to duty. The Learned Counsel for the Respondents further contended that the daily wage workers are not entitled for any benefit which are available to the regular employees.

9. On consideration of the rival contentions of the advocates of both the sides it is seen that: admittedly, the workman had been engaged as a sub-staff in the Respondents' bank and used to work under Respondent No.1 and was getting remuneration as per Ex.W4 series. The Respondents' bank has issued vouchers to the Petitioner towards his work. It also shows that the workman has worked for more than 240 days during the years 2001-2004. Further more, as per the admission of MW1 even though no attendance registers were being maintained for the casual employees, but the work of the Petitioner was perennial in nature. The Respondents have not denied about the engagement of the workman in their office from the year 2000 to 1st August, 2005. Further, the Respondents have admitted that Respondent No.1 has forwarded the application of the workman to Respondent No.2 for his regularization as an one third employee. This shows, that the workman's work was found satisfactory during his service period. But without any rhyme and reason he was terminated from service, and at the time of termination neither any notice nor any compensation has been paid to the workman before his termination. This shows that the Respondents have violated the procedure required under Sec.25F of the Industrial Disputes Act, 1947 and without following proper procedure the Respondents have terminated the workman.

10. Admittedly, Respondent No.1 has forwarded the application of the workman to Respondent No.2 to absorb in the post of Peon but, it was not considered. While the Respondents have terminated the workman orally, he approached the Assistant Labour Commissioner(Central) and afterwards, the Assistant Labour Commissioner(Central), Visakhapatnam conducted conciliation. But as the conciliation was ended in failure, the matter was referred to the Ministry of Labour and Employment, in turn it was referred to this Tribunal. Even though, similarly situated employees have been absorbed in the Respondents' office, it is not known what prevented the Respondents to consider the case of the workman as a casual labour in their office.

11. The Petitioner has worked for more than five years continuously, as a sub-staff under Respondent No.1 with the knowledge of Respondent No.2 and he comes under the definition of workman under the Industrial Disputes Act, 1947. When the Petitioner was retrenched, the Respondents are expected to retrench the workman as per the provisions contained under Sec.25F of the Industrial Disputes Act, 1947. Therefore, the termination or retrenchment of the Petitioner workman is in violation of Sec.25F of the Industrial Disputes Act, 1947. Since the Respondents have not shown the reasons for retrenchment of the workman and even the workman was not in receipt of any notice of termination or notice pay/one month pay and further the workman was not paid any retrenchment compensation of 15 days average pay for every completed year of service, the retrenchment or termination of the Petitioner workman is illegal.

Thus, Point Nos. I & II are answered accordingly.

ORDER

In the circumstances stated above it is held that the termination of service of the Petitioner workman Sri T. Suresh Babu, Ex-Temporary Sub-staff with effect from 1.8.2005 is illegal and not justified and the Respondents are directed to reinstate the Petitioner workman in duty without back wages as a Sub-Staff in their office. It is further directed that the Respondents should consider the Petitioner for his appointment as a casual labour under the relevant scheme and rules. If the Petitioner is not eligible under the rules for his appointment as a casual labour, the Respondents are at liberty to retrench the Petitioner only by following the procedure laid down for retrenchment under the relevant Act.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 1st day of August, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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WW1: Sri T. Suresh Babu	MW1: Sri Chamorthy Suryanarayana Murthy
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Documents marked for the Petitioner

Ex.W1: Photostat copy of fax message dt.2.8.2002
 Ex.W2: Photostat copy of leave application with sick certificate
 Ex.W3: Photostat copy of Minutes of conciliation proceedings
 Ex.W4: Photostat copies of bunch of payment vouchers from 2.8.2004 to 4.2.2005

Documents marked for the Respondent

NIL

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबंधित नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 208/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-41012/180/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 208/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 25.10.2017.

[No. L-41012/180/2000-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I. D. No. 208/2000****Ref .No. L-41012/180/2000/IR(B-I) dated 30.11.2000****BETWEEN :**

Sri Veer Singh S/o Sri Dattar Singh
H.No. 165, Bhagat Singh Ward
Bina, Distt. Sagar
Madhya Pradesh

AND

1. The DRM.
Central Railway,
Jhansi-284001.
2. The Asstt. Engineer
Central Railway, Gwailor-424001
3. The Divisional Engineer
Central Railway, Jhansi-284001
4. Permanent Way Inspector
Central Railway, Gwailor-424001

AWARD

1 By order No. L-41012/180/2000 IR(B-I) dated 30.11.2000 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Veer Singh S/o Sh. Dattar Singh, Madhya Pradesh and the DRM/Asstt. Engineer/Divisional Engineer/PWI, Central Railway, Jhansi/Gwailor for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF ASSISTANT ENGINEER, CENTRAL RAILWAY, GWALIOR IN TERMINATING THE SERVICES OF SRI VEER SINGH VIDE ORDER DATED 22.12.1995 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. As per the claim statement W-3 the workman has stated in brief that he was appointed as casual labour on 19.2.1977 under the Jhansi Division, Central Railway by the management of opposite party; at the time of his regularization, Casual Labour Card No. 2578272 was issued. He has worked for about 17 years and as per the existing Railway Rules MRCL was also issued, PF was regularly deducted and the facilities of railway pass, PTO and medical amenities were also provided. He has been a regular and permanent railway employee till his termination, and his monthly salary was Rs.1500/-. The petitioner has further stated that as per the charge sheet dated 19/20.05.1994, he was charged for having forged and fabricated Casual Labour Card No. 257827, a explanation was submitted by him for the charges leveled against him, and charges were denied by him, request was made to conduct enquiry under the prevalent Disciplinary and Appeal Rules 1968, the management appointed Sri R.P. Agarwal, Chief PWI as enquiry officer. Information for the date fixed 01.12.1994, 09.12.1994, 08.05.1995 and 24.04.95 in the enquiry was sent to him, he appeared before the enquiry officer but the enquiry was not conducted as per Rules neither any opportunity was provided to him to cross examine the management witness and to adduce his documentary and oral evidence in defence. Principles of natural justice were ignored and after conclusion of the enquiry report was submitted, thereafter a show cause notice dated 21.9.95 was sent and punishment for removal from service was proposed, to which reply was submitted by the petitioner, even then without looking into the grounds taken in his explanation punishment of removal from service was imposed vide letter dated 22.12.1995.

4. The workman has stressed that procedure provided in the Disciplinary and Appeal Rule 1968 has not been followed, although being summoned off and on during the enquiry the statement was not recorded in his presence neither any query was made nor any document was provided by any cogent witness, opportunity was not provided to defend himself, principle of natural justice was not followed, PWI Bharua who had issued Casual Labour Card was not produced in the evidence neither any evidence was recorded nor any statement of concerned Clerk of his office was

recorded. With the aforesaid pleadings request has been made to declare the dismissal order dated 22.12.1995 as illegal, and to reinstate him in the service with full salary and consequential benefits etc.

5. The management in its written statement M-7 has denied the allegations leveled in the claim statement. It has been categorically stated that the petitioner was not engaged w.e.f. 19.2.1977 neither any Casual Labour Card no. 257827 was ever issued in his name. The opposite party has asserted that the said labour card was a forged and manufactured document, it was not issued by the competent authority and perhaps on the basis of aforesaid Labour Card the workman succeeded his engagement in the Railway, he was initially engaged as daily rated casual labour at Lalitpur, after having worked for required number of days he was granted status of monthly rated Casual Labour, after being transferred from one place to another zone he was posted at Gwalior in the year 1991 but during all this process his services were never regularized.

6. The opposite party has stressed that Railway Administration found that several persons on the basis of their fake and forged Casual Labour Card and fake certificates have been able to get employment under the Railway Administration and they were continuing to work as also availed consequential benefits of Railway Servant. Under the scrutiny process certain casual labour card and working certificates on being verified were found to have been forged and therefore such employees were disengaged/removed/terminated from the services, as per their status. Similarly the Casual Labour Card of the workman on being verified was also revealed to be fake and forged card, no such card was ever issued by the competent authority. Further its details were not mentioned in any of the relevant records such as LHTI register etc. The PWI concerned has categorically denied the authenticity or genuineness of the aforesaid card. So the major penalty charge sheet was submitted in the aforesaid case of the workman. Enquiry officer was appointed, thorough and comprehensive enquiry was conducted. In his explanation the workman denied all the charges, seven dates were fixed in the enquiry, due information was sent through registered post, adjournment was sought by the workman, copies of the relevant record were provided to him but he did not submit any further reply and did not attend the enquiry on 22.7.95, further date was fixed. Under such circumstances enquiry officer concluded the enquiry and the enquiry report was prepared. After conclusion of the enquiry, further a show cause notice alongwith copy of report was sent but the applicant did not submit any representation or reply, after going through the findings of the enquiry officer the punishment of removal from service was imposed on the applicant but the applicant did not avail the statutory remedy of filing any appeal. Due to non cooperation and non participation of the applicant in the enquiry proceedings, the enquiry officer was compelled to proceed with the enquiry as per Disciplinary and Appeal Rules 1968. With the aforesaid averments the request has been made by the opposite party to adjudicate the matter in its favour.

7. While denying the main allegation leveled in the written statement, rejoinder and reply dated 14.5.2001 has been filed alongwith annexures, reiterating the pleas taken in the claim statement.

8. The management has filed certain documents annexed with application M-8 dated 2.8.2001, another application M-9 dated 30.8.2001. Stay order dated 3.7.2002 passed by Hon'ble High Court, Lucknow Bench, Lucknow in writ petition 3459/02 has also been filed by the management.

9. The workman has moved application W-50 dated 8.12.2015 enclosing therewith copy of the order dated 4.11.2015 passed by Hon'ble High Court, Lucknow Bench, Lucknow in SS 3459/02.

10. The affidavit of Sri Veer Singh W-54 has been filed by the petitioner in evidence. He has been thoroughly cross examined.

11. The management has filed affidavit M-67 of Sri Ramesh Lal Rawat and M-71 of Sri Sanjay Kumar Rajjak in evidence. They have been thoroughly cross examined on behalf of the workman.

12. Preliminary issue was framed by the then Hon'ble PO/Judge vide order dated 21.3.2001. Order dt. 18.1.2002, regarding aforesaid preliminary issue, passed by the then PO, was challenged before Hon'ble High Court, Lucknow Bench, Lucknow through Writ Petition S/S 3459/02. Hon'ble High Court vide its order dt. 04.11.2015 quashed the above order dated 18.1.2002, and remitted to this Tribunal for deciding it afresh.

13. After providing sufficient opportunity to both the parties and having heard at length, preliminary issue dated 21.05.2001 was decided against the management by me on 30.03.2016. The management was directed to file list of witness and reliance, so as to prove the charges leveled against the workman, before this Tribunal. Being aggrieved by this order again the writ petition was filed before Hon'ble High Court, Lucknow bench Lucknow vide MS 30366/16. Hon'ble High Court has directed this Tribunal vide order dated 22.12.2016 to adjourn the case to next date. Similar direction was given by Hon'ble High Court vide order dated 01.03.2017.

14. Hon'ble High Court, Lucknow Bench, Lucknow has disposed of the aforesaid writ petition vide order dated 29.3.2017, with the following observations;

“After hearing learned counsel for parties and going through the record, as agreed between the parties, the writ petition is disposed of with a direction to respondent No.2/Central Government Industrial Tribunal, Lucknow Bench, Lucknow to decide the matter in accordance with law after giving adequate

opportunity to the parties concerned to prove their case without influenced by the observations as given in the order dated 30.3.2016 passed in the matter in issue expeditiously, say, within a period of six months from the date of receiving certified copy of this order.”

15. Arguments of both the parties on the preliminary issue as well as on merits of the case, have been heard at length, quite comprehensively. Record has been scanned thoroughly.

16. Learned Authorized Representative for the workman has submitted that the petitioner being initially appointed as casual labour on 19.2.1977 under the management of Central Railway and after having worked for about 17 years, his services were terminated on the flimsical and unbelievable ground of alleged fabrication and forgery committed in his Casual Labour Card. The domestic enquiry has also been challenged on the ground of perversity and unfairness. Right to defend was also not provided to the petitioner. Taking strong objection to this averment, learned authorized representative for the opposite party has stressed that several persons on their fake and forged Labour Cards and false certificates have been able to get employment under the Railway Administration, petitioner was one of those, when enquiry was conducted the casual labour card and working certificates were found to have been forged, thereafter comprehensive domestic enquiry was conducted as per rules, sufficient opportunity was also provided and when the petitioner did not participate in the enquiry, proceedings were concluded and the petitioner was found guilty so his services were terminated after having served a show cause notice to him. The management has also emphasized that the petitioner did not avail the opportunity to prefer any appeal against the termination order.

17. During the course of arguments, this point was highlighted on behalf of the petitioner that the alleged show cause notice appears to have been given to the employee on 21.9.95 was actually served on 6.12.95 but the Railway Authority did not wait for the proper service of the notice and imposed penalty on 21.9.95 itself. In this regard following portion of the document M8/14 may be quoted:

“.....I have come to the opinion that service card no. 257827 that this card is fake and forged and I found Sri Veer Singh, Datar Singh MRCL guilty of submitting a fake card to enter in Railway Service. Hence I impose on him the penalty of Removal from Service.”

18. This document has been filed before the Court on behalf of the management. Therefore it can not be denied legitimately by the opposite party. However, learned authorized representative for the management submits that the above mentioned version is infact ‘internal noting on the file’ and it was not acted upon by the management on 21.09.1995. Due procedure was followed. Show cause notice was issued to the petitioner (M8/13), seeking explanation within 15 days. The show cause notice was served on the petitioner on 06.12.95(M8/7) and thereafter since no reply and explanation was submitted by the petitioner workman, his services were terminated vide comprehensive order dated 22.12.95 (paper No. M8/6).

19. It is evident from the record and this office note sheet dated 21.09.95 that an opinion has been mentioned there in that the said service card no. 257827 was found fake and forged, and it has also been inferred by the authority to impose the penalty on workman from removal from service. **However, this fact can not be ignored that the comprehensive show cause notice/memo dated 21.9.95 was also issued to the workman, which was perhaps served on 6.12.95. After a gap of 15 days order of removal from service was sent on 22.12.1995 informing thereby that it will be effective on 31.12.1995.**

20. It has been argued on behalf of the petitioner that the main witness was PWI but he was not examined during the course of enquiry rather some other railway officials who are not directly concerned with the issuance of the Service Card or maintenance of the record were examined. In this regard the management has submitted that Sri Hari Prakash Verma was the appropriate official to elaborate the genuineness of the service card, so he was examined. The opportunity was also given to cross examine him. When opportunity was further provided to management to adduce evidence before this Court Sri R.L. Rawat, Chief Office Supdt and Mr. Sanjay Kumar Rajjak, Time Keeper have filed their affidavit and they have been cross examine as well. It has also been pointed out by the management that out of the concerned PWIs, Sri M.P. Sood (posted at Bharwa, Sumerpur from 04.08.72 to 31.8.77) has retired prior to 1.3.2002 and Sri SCA Tewari (posted at Bharwa, Sumerpur from 1.9.77 to 3.4.78), has retired prior to 1.3.2002, and their present status is not known to the management. Another PWI Sri M.A.Khan who has been posted as PWI from 4.4.78 to 6.1.82, is no more alive. The petitioner asserted that Sri MP Sood and Sri SCA Tewari ought to have been adduced in evidence and their whereabouts could be easily traced by the management. Learned AR for the management in reply to this submission, has explained that more than 14 years period has elapsed after their retirement, it is not known to the management where they are actually residing viz either with their family members or living alone any where in the country or settled at abroad. It has also been further elaborated on behalf of the management that generally the pension- amount is directly credited by the bank to the account of the retired employee and bank has got no authority to enquire every week or every month, where the retired employee is actually residing.

21. Learned AR for the management has relied on the following citations;

1. AIR 1966, Supreme Court, State of Punjab Vs Amar Singh Harika page 1313.

2. Civil Appeal No. 263/13, State Bank of India Vs Narendra Kumar Pandey, Hon'ble Supreme Court, Judgment dated 14.01.2013.
3. Civil appeal No. 6573/04, A.Sudhakar Vs Post Master General, Hyderabad, Hon'ble Supreme Court, Judgment dated 24.3.2016.

Learned AR for the workman submits that the aforesaid pronouncements do not apply to the fact of the present case.

22. The photo copy of the enquiry report (M8/16) reveals that enquiry was conducted on 21.10.94, 09.12.94, 23.12.94, 16.02.95, 04.05.95, 27.05.95 and 22.07.95. The workman attended the proceeding on 09.12.94 and 27.05.95, request was made by him to further adjourn the enquiry which was accepted by the enquiry officer. However, on subsequent dates, neither any letter or application was submitted by the workman nor he himself attended the enquiry. Any sufficient explanation for his absence has not been submitted by the petitioner. This fact is also very crucial that the said service card has not been recorded in the Service Card Register. No entry regarding said service card has been found in the concerned official document such as LHTI register etc. It is an admitted fact that prior to the knowing of the alleged forgery the petitioner has been working as a Railway employee and he was also paid salary etc. for the said period. Learned AR for the workman emphasizes that the workman has been working for more than 17 years but the alleged forgery was never found, neither any FIR was lodged against him for the so called fabrication or forgery. Learned AR for the management stressed in reply, that it is not required, neither it is mandatory to lodge an FIR, and when the administration came to know regarding fabrication, comprehensive departmental enquiry was conducted and in its furtherance punishment was ultimately awarded as per established Railway Rules.

23. Certified copy of the Casual Labour Card and photo copy of the service record of the petitioner have been filed by the management as per application M-9 dated 30.08.2001. On paper no. M-9/15 the date of birth of the petitioner has been mentioned as 01.07.58, and his initial employment date has been mentioned as 01.01.76, meaning there by that the age of the petitioner on the date of initial employment was 17 years and six months. Further another date 19.02.77 (which has been **over written**) has also been mentioned. Moreover, the petitioner himself in his cross examination dated 18.08.2017 has asserted his date of birth as 01.07.1960 and he has also stated on oath that his date of joining was 19.02.77. In his affidavit W-54 dated 23.05.2016 filed before the Tribunal, the deponent Veer Singh shown has his age as about 57 years which impliedly reflects that the date of birth 01.07.60 mentioned by the petitioner might be approximately correct. As per service record M-9/5 if his date of joining is considered as 01.01.76 then his age was less than 16 years and if it is considered as 19.02.77 then his age comes to about 17 years, meaning thereby in every condition, the petitioner workman was definitely a minor boy. No such railway Rules or guidelines have been produced before this Court which can permit a minor boy to get the employment as casual labour under Railway Administration.

24. After having heard the intellect arguments of both the parties, in the light of the prudent analysis of the record available before the Court, it is inferred that the alleged illegality of the impugned termination order dated 22.12.95 passed by the management, has neither directly nor impliedly been reflected, on the basis of the evidence available on the record. The workman is therefore not entitled to any relief.

25. Award as above.

LUCKNOW

RAKESH KUMAR, Presiding Officer

22.09.2017

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्कूटर इंडिया लिमिटेड उत्तरी रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 04/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court,

Lucknow as shown in the Annexure, in the industrial dispute between the management of M/s. Scooters India Limited Northern Railway and their workmen, received by the Central Government on 25.10.2017.

[No. L-12025/01/2017-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 04/2012

BETWEEN :

Sri Suresh Kumar Pal
S/o Sri Baboo Lal Pal,
R/O 555 K/183, Village Kanausi
P.O Manak Nagar, Lucknow(U.P.)

AND

The Chairman-cum-Managing Director
M/s. Scooters India Limited,
Northern Railway
Store Alambagh,
Lucknow,

AWARD

1. The workman has filed petition under section 2A of the I.D. Act. 1947 (14 of 1947) against the Chairman-cum-Managing Director, Scooters India Limited, Lucknow for adjudication.
2. As per the claim statement W-1, the workman has stated in brief that he was appointed as unskilled worker in the office of the opposite party on 4.2.1975, his service number was 02457. It has been stated that the petitioner was appointed after completing all the necessary formalities prevalent in the establishment of the management and later on he was confirmed on the said post on 1.4.1976 after completion of probation period and his work and conduct has been satisfactory during entire service period.
3. The workman has submitted that he remained absent w.e.f. 23.11.1983 due to his ailment and so could not attend his duties. It has been emphasized that since his appointment he has completed more than 240 days service in every year but due to his absence the management terminated his services vide letter dated 12.12.1983 without conducting any enquiry or without affording any opportunity of hearing under the garb of clause 9.3.12 of the Standing Orders of the Company. The workman could not have knowledge of letter dated 12.12.1983 due to his ailment, when he became fit he went to join duty but he was not permitted. He wrote a letter dated 28.5.1985, thereafter through letter dated 5.6.1985 the opposite party provided him the order of termination. The petitioner has asserted that several requests were made by him through representations to reinstate him in service but all his efforts went in vain. Ultimately Writ Petition was filed before Hon'ble High Court. Due to wrong advice he moved Hon'ble High Court but alternate remedy was available. Vide judgment dated 18.11.2002 Hon'ble High Court dismissed the petition with liberty to avail the alternate remedy available in law. Then the workman approached the authority before the State Government and the reference was made by the State Government vide order dated 11.8.2008 proceedings were initiated before Industrial Tribunal-II U.P. Lucknow through AC No. 131/2008, in the meantime the management has moved an application mentioning therein instructions dated 5.5.2008, thereafter the State Industrial Tribunal terminated the proceedings and observed that the workman should raise the dispute under the I.D. Act.
4. The workman has stressed that in pursuance of the order dated 4.3.2011 passed by the Industrial Tribunal, request was made to the RLC (C) Lucknow for redressal of his grievance , efforts for conciliation was made but no settlement could be arrived and after expiry of the mandatory period of 45 days, workman sought permission to withdraw the case and to approach this Court on 24.11.2011. The order of termination has been alleged illegal and void ab initio. 1998(6) S.C.C. 538 Case has been referred in the claim statement alongwith other cases as well. With the aforesaid pleadings request has been made to declare the termination order dated 12.12.1983 as illegal and unjustified and to get the workman reinstated in service with all consequential benefits including back wages, service benefits etc. Letter dated 30.11.2011 sent by the RLC (C) Lucknow has been annexed with claim statement.
5. Preliminary objections/written statement M-5 has been filed by the opposite party stating therein that totally incorrect and false and misconceived case has been presented before this court after lapse of about 28 years and case is highly time barred and is liable to be dismissed. The opposite party has admitted that the petitioner was appointed as unskilled worker on 1.10.1975, and since inception his service record was very poor and charge sheet was issued,

several times for his frequent unauthorized absence. Warning letter dated 6.10.1980 has also been referred for unauthorized absence for 41 days during the year 1979, one increment with cumulative effect was stopped vide letter dated 12.5.1981 for another unauthorized absence for 19 1/2 days; through letter dated 21.11.1981 one increment with cumulative effect was stopped for 16 days unauthorized absence. Other instances have also been given by the opposite party in the written statement M-5.

6. The opposite party has asserted that through letter dated 20.1.1983 enquiry was constituted against the workman. Although several reminders were issued, charge sheet and warning letters were issued but the workman adopted unauthorized absence, then under such circumstances he was served dated letter on 12.12.1983 under clause 9.3.2012. Certified Standing Orders of the Company. After lapse of one year and five months, petitioner's letter dated 28.5.1985 was received in the office of the opposite party that he could not obtain letter of termination and request was made for duplicate copy. The opposite party has asserted that the termination of the workman is fully legal and justified. Facts regarding proceedings before Hon'ble High Court and UP Industrial Tribunal have been mentioned by the opposite party also. The contents of the petition have been alleged to be misconceived and false. With the aforesaid averments, opposite party has requested to reject the claim of statement of the workman. Notices through registered post were sent to opposite party no.1, Balaji Securities Services but none appeared on behalf before the court, neither any written statement nor reply was submitted by opposite party no.1.

7. While strongly refuting the contrary version taken by the management in its written statement rejoinder W-6 has been filed by the workman, reiterating the facts mentioned in the claim statement.

8. As per list W-7 several documents have been filed by the workman. Further the workman has filed certain documents with list W-3.

9. The management has requested to keep the copy of the Standing Orders on record, as per application M-14.

10. The petitioner has adduced himself in evidence. He has been thoroughly cross examined on behalf of the management. The management has filed affidavit of Sri A.K. Chatterjee, Manager Marketing as M-20. He has been cross examined by the learned AR of the workman.

11. Arguments of both the parties ;have been heard at length and record has been scanned thoroughly. It is an admitted fact to both the parties that the petitioner has been working under the administrative control of opposite party as unskilled worker. The petitioner has alleged that his service has been illegally terminated without any reason. No opportunity was provided to him to defend himself, directions of Hon'ble Supreme Court given in other case were also not followed by the management. The management has submitted that the petitioner since inception of his service has been habitually absentee, his service record was very poor, he has been warned and charge sheeted several time for his unauthorized absence. This allegation has been denied by the workman.

12. On page 2 of the written statement the opposite party has cited following specific instances besides other facts;

- a. **That he has been warned vide letter dated 6.10.1980 for remaining unauthorized absence for 41 days during the year 1979.**
- b. **That his one annual increment with cumulative effect was stopped of Sri S.K. Pal vide letter dated 12.5.1981 for remaining unauthorized absence for 19 ½ days during period of 6 month i.e. from January 1980 to June 1980.**
- c. **That again one annual increment with cumulative effect was stopped of Sri S.K. Pal vide letter dt. 21.11.1981 for remaining 16 days unauthorized absence during the period from July 1980 to March 1981.**
- d. **That Sri S.K. Pal again was charge sheeted vide charge sheet dated 17.3.1982 for remaining unauthorized absence for 36 days during the period July 1980 to March 1981 and was brought to the lowest stage of his basic wage scale.**
- e. **Sri S.K. Pal was again charge sheeted vide letter dt. 15.10.1982 for remaining 26 days unauthorized absence during the period from January 1982 to June 1982 and was given 48 hrs. times to submit written explanation of the above charge sheet.**
- f. **That an inquiry was instituted against Sri S. K. Pal vide letter dated 20.1.1983.**

13. The petitioner has submitted that no warning was ever issued to him, he has been working very sincerely and diligently, but due to certain ailment he could not attend his duty for which formal request alongwith medical certificate was submitted. The opposite party has refuted this submission and it has been alleged that without any prior sanction by the competent authority the petitioner often used to abstain himself from duty. Therefore, as per clause 09.03.2012 of the Certified Standing Orders of the Company, without issuing any notice the company of his own accord terminated the petitioner's service with company since he has remained absent without any leave/intimation for more than 10 days.

14. The workman has pleaded that the so called termination order was not delivered to him properly, when he made a written request to the management then the said letter was sent to him.
15. The management has filed certain documents as per list M-8. This list besides other documents, consist of letter dated 6.10.1980, 12.5.1981, 21.11.1981, 17.3.1982, 15.10.1982 etc. wherein the period of unauthorized absence has been mentioned. In another letter dated 20.1.1983 an enquiry officer was appointed for holding formal enquiry against the petitioner. Earlier in response to the charge sheet dated 15.10.1982 an explanation dated 7.12.1982 was also submitted by the petitioner. Although the documents referred by the management have not been admitted, even then denial or non admission, does not falsify all the documents submitted as per list M-8. It would not be a prudent presumption that the documents have been falsely or fraudulently framed by the management in order to terminate his service.
16. Another important letter dated 23.5.1985 sent by the petitioner to the management wherein he has submitted that due to his mental disbalance he could not know all the facts regarding ailment and termination letter was not traceable is quite imaterial. This letter reflects that the so called mental dis-balance medical papers and applications were not submitted by the workman to the management in time and in proper manner.
17. Learned AR for the management has raised a preliminary legal point that the petition is highly belated, and it has been filed after about 28 years of leaving the services of the company. Learned AR for the workman has submitted that after receiving the so called termination letter, writ petition was preferred before Hon'ble High Court, due to wrong advice given to him while alternate remedy was available. Thereafter the matter was raised before Industrial Tribunal-II, Uttar Pradesh, Lucknow but due to notification dated 5.5.2008 another notification dated 3.7.98 has rescinded. Thereafter the workman approached RLC(C) and after the lapse of mandatory period of 45 days, petition under Section 2 A of the I.D. Act has been moved before this Court. Explanation submitted by the working regarding delay is quite satisfactory.
18. Learned AR for workman has relied on the following citation;
1. 1998(6) SCC Uptron India vs Shammi Bhan page 538;
 2. Civil Appeal No. 1471/99 Scooters India Ltd. Vs. M.Mahammad Yaqub Hon'ble Supreme Court.
19. Learned AR of the management submits that the above Rulings do not apply to the present case. He has referred the following citation:
- Appeal (Civil) 638/2000 Nedungadi Bank Ltd. Vs K.P. Madhavankutty & others Judgment date 28.1.2000.
20. Learned AR for the workman has stated that the above submissions of the management and the aforesaid prouncement is not applicable to the present case.
21. After having heard the intellect arguments of both the parties at length in the light of the principles laid down by the Hon'ble Supreme Court in the aforesaid rulings and perusal of the record available before the Court, it is inferred that since the petitioner has been habitual absentee, the application of the Certified Standing Order by the management is quite legal and justified. The order dated 12.12.1983 issued by the management can not be adjudicated as illegal and improper. The petitioner is not entitled for any relief.
22. Award as above.

LUCKNOW

9.07.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 25 अक्तूबर, 2017

का.आ. 2560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबंध निर्योजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 19/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-12012/73/2012-आईआर (बी-1)]

बी. एस. विष्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 25.10.2017.

[No. L-12012/73/2012-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/19 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

Assistant General Manager,
State Bank of India, Zonal Office,
Admn Office, Sharda Chamber,
7th Floor, 386/2, Shankarseeth Road,
Pune – 411 037.

AND

THEIR WORKMAN.

Smt. Sarika Ramesh Shinde,
S. No. 311, Bhavani Peth,
Kasewadi,
Pune – 411 042.

APPEARANCES:

FOR THE EMPLOYER : Shri M.G. Nadkarni, Advocate

FOR THE WORKMAN : Mr. Umesh Vishwad, Advocate

Mumbai, dated the 27th July, 2017.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12012/73/2012 – IR (B-I) dated 21.03.2013. The terms of reference given in the schedule are as follows :

“Whether the action of the management of State Bank of India, Zonal Office, Pune in terminating the services of Smt. Sarika Ramesh Shinde w.e.f. 16.1.2012 is legal and justified ? If not, to what relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives. Second party workman filed statement of claim Ex.6. According to the concerned workman, she was working with the first party bank since 2000 as a Sweeper. She has worked continuously from 2000 to 16.1.2012 with the first party bank. She was doing the work of cleaning and sweeping the premises of Zonal Office Pune and the officers’ quarters of the first party bank under direct control and supervision of the first party bank. Her work is regular and perennial. The first party bank was making payment to her. As such there is direct employer-employee relationship between first party bank and second party workman.

3. According to the second party workman, a group of workmen raised the industrial dispute against the management of first party bank, Mumbai for non-absorption of workmen engaged through contractors in services of the first party bank. The agreement was arrived at and the contract workers were absorbed in the service of Central office and Mumbai Main Branch of the first party bank. However, the first party bank has failed to absorb the contract employees working in Pune and were discriminated in same situation. Therefore, the union namely Thekedar Kamgar Sangh has made demand of absorption of second party workman and other workers. The said union has filed writ petition bearing No. 6247 of 1998 before Hon’ble Bombay High Court. The said petition was disposed of in the year 2006 in view of law laid down in case of Steel Authority of India. Since 1998, the first party bank has stopped paying

wages to the second party workman through the contractor and has started direct payment to the second party workman. There is no contractor since 1998 and the wages were directly paid by Pune Zonal office of the first party bank. Even after disposal of the said writ petition the second party workman was in service and wages were paid to her directly by the first party bank.

4. It is contention of the second party workman that she was in continuous service and had put continuously 240 days and more continuous service in every completed year of the service. However, the first party bank has terminated the services of the second party workman without following the procedure laid down in section 25-F of I.D. Act, 1947. Therefore the said termination is illegal, improper, arbitrary and unjust. It also amounts to unfair labour practices. The second party workman is therefore asking to declare that the termination of her services by the first party bank is illegal. She is also asking for re-instatement with continuity of service and all other consequential benefits from the date of termination till actual date of re-instatement along with interest and cost.

5. First party bank has resisted the claim by filing written statement Ex.7. According to the first party bank, the bank had engaged the contractor named M/s. Golden Enterprises since June 1981 who was entrusted with the job of house-keeping at the Zonal office, located at East Street, Gulmohar, Pune and also at the bank's residential quarters namely Madhuban Bank House and Ashirwad Bldg. at Nagar Road, Pune. The bank was making payment to the contractor for the service rendered to the bank and the contractor was in turn effect the payment to the workers engaged by him for carrying out the job given to him by the bank. The said contractor abandoned the contract in November 1998 and ran away. The bank terminated the contract with M/s. Golden Enterprises sometimes in 1999 – 2000. However, with reference to the letter and spirit of the order of Hon'ble Bombay High Court dated 21.3.2006, the bank continued to engage the contract labours for doing the house-keeping jobs at the bank premises. Bank used to give money to Shri Selvam, the Supervisor against the production of the bills. Subsequently, there was inter-se dispute and the contract labours requested bank to pay money directly to them. Accordingly, the arrangement was worked out whereby Shri Selvam used to submit bills and bank credited the amount to the account of each contract labour.

6. It is also contention of the first party bank that on 10.9.2010 the bank published tender notice in local newspaper for maintenance and house-keeping of the banks premises. The bank also suggested the contract labours to form a society, partnership firm or a company for participating in the tender process. Contract labours did not pay heed to the suggestion made by the bank. The tender process was completed on 16.12.2011 and the contract for maintenance and house-keeping of the bank premises was awarded to contractor who had quoted the lowest rates. The new contractor displayed the notice on the bank's notice board stating that he was given contract for maintenance and house-keeping of the banks premises and invited those who were interested to work with him to approach him. However, the concerned workman and other workers did not avail this opportunity.

7. It is also contention of the first party bank that there is no employer-employee relationship between the bank and concerned workman. The tribunal has no jurisdiction to adjudicate the dispute in question. Even as per order in writ petition bearing No. 6247 of 1998 of Hon'ble Bombay High Court, the concerned workman did not approach the competent authority to get the matter referred to tribunal for adjudication and as such dispute referred for adjudication in the present reference has been raised belatedly. It is quite stale. The reference is not maintainable on that ground.

8. According to the first party bank, the concerned workman was engaged by the contractor named M/s. Golden Enterprises. The bank was making payment to the said contractor who in turn was effecting the payment to the workmen engaged by him and therefore the claim of concerned workman that she was engaged by the bank is not maintainable. It is, thus, contention of the bank that it has not discriminated the contract employees working at Pune and therefore the claim of the workman is completely untenable.

9. It is also contention of the first party bank that provisions of section 25-F of I.D. Act, 1947 are not applicable in the factual matrix of the case since the service of the concerned workman automatically came to an end after new contractor was engaged by the bank after duly following tender process.

10. It is then contention of the first party bank that the settlement / agreement that might have been reached at Mumbai has no relation whatsoever with the present dispute and the workman concerned cannot base her claim on the basis of settlement entered into in a different case. On this premises, the first party bank has sought rejection of the reference.

11. Following issues are framed at Ex.8. I reproduce the issues along with my findings thereon for the reasons to follow: —

Sr. No.	Issues	Findings
1	Whether the reference is maintainable ?	Yes
2.	Whether there exists employer-employer relationship between the first party bank & concerned workman?	No
3.	Whether the action of the management of State Bank of India in terminating the	

	services of Smt. Sarika Ramesh Shinde w.e.f. 16/01/2012 is legal and justified ?	Yes
4.	If not, whether the concerned workman is entitled to be reinstated in the services of first party with continuity of service and all other consequential benefits ?	No
3.	What Order ?	As per final order

Reasons

Issue No.1 :-

12. The Learned Counsel for the first party bank submitted that admittedly the union namely Thekedar Kamgar Sangh has made demand of absorption of second party workman and other workers. The said union has filed writ petition bearing No. 6247 of 1998 before Hon'ble Bombay High Court. The main prayer of the petitioner was for issuance of writ of mandamus to the bank for regularizing the services of the concerned workers in the banks service. He submits that the said writ petition was disposed of by the Division Bench of Hon'ble Bombay High Court vide order dated 9.3.2006. In the said order the Hon'ble Bombay High Court made it clear that in view of law laid down by the Hon'ble Supreme Court of India in Steel Authority of India & Ors. V/s. National Union Waterfront Workers & Ors., the relief claimed in the petition cannot be granted and that only remedy available to the petitioner was to seek a reference to the tribunal. Accordingly, the petitioners were given liberty to make necessary application to the competent authority within two weeks from the date of order and the competent authority was directed to make reference as expeditiously as possible and in any case within a period of two months from the receipt of application of the petitioners. Submission is to the effect that the petitioners in the writ petition did not approach the competent authority to get the matter referred to the tribunal for adjudication within time. The contact labours of M/s. Golden Enterprises filed industrial dispute before the Labour Commissioner, Pune through Zilla Mazdoor Sangh vide their letter dated 23.12.2011. As such the dispute referred for adjudication in the present reference is belated i.e. after about 7 years from the date of order of the Hon'ble Bombay High Court. In view of this the submission is that the reference is not maintainable.

13. The Learned Counsel for the first party bank seeks to rely on the decision in case of Nedungadi Bank Ltd. V/s. K.P. Madhavankutty & Ors. 2000 (II SCC 455) to submit that the power of the appropriate government to exercise its powers under section 10 of the I.D. Act, 1947 is to be exercised reasonably and in a rational manner. There appears to be no rational basis on which the Central Govt. has exercised the powers in this case after a lapse of about 7 years of the order of the Hon'ble Bombay High Court. As such the dispute is stale and could not be the subject matter of the reference under section 10 of the I.D. Act, 1947.

14. He also seeks to rely on the decision in case of Reserve Bank of India V/s. Gopinath Sharma & Anr. 2006 (6 SCC 221) to submit that delay of 4 years in raising the dispute even after re-employment of the most of the workmen was held to be fatal.

15. He then seeks to rely on the decision in case of State of Karnataka & Anr. V/s. Ravi Kumar 2009 III LLJ (206 SC) to submit that 14 years delay to challenge the termination was stale reference and the reference ought to have been rejected on the ground alone.

16. However, in view of the facts of the present case it is to be seen whether the second party workman and other workers were diligent in raising the dispute before competent authority. We have document at Page 2 of list of document dated 11.3.2016. It is a copy of the letter dated 31.5.2006 (Ex.15) addressed to the Dy. Commissioner of Labour, Pune requesting him to intervene in the dispute and making reference within the time prescribed by the Hon'ble Bombay High Court. That would show that Thekedar Kamgar Sangh has made an application for making the reference within time prescribed by the Hon'ble Bombay High Court.

17. So far contention go, it is also a contention of the second party workman that even after the disposal of the said writ petition second party workman was in service and the wages were paid by the first party bank to her directly. As per her contention, the first party bank has terminated the services of the second party workman and as such the dispute was raised by the second party workman for regularization of the services of the concerned workman. It is the submission of the second party workman that the reference has not been arisen out of the demand of the union but the said reference has arisen out of the demand of the individual workman. The demand is not for regularization but the demand is for re-instatement of service. In view of these facts, it can be said that the individual workman has made the demand for regularization of her service and the reference has arisen out of her demand. Even before that in 2006 it is the union who has made application to the Dy. Commissioner of Labour, Pune requesting him to intervene into the dispute and make the reference within the time prescribed by the Hon'ble Bombay High Court. The said letter dated 31.5.2006 is at Ex.15. Therefore it can be said that the union was diligent in making the reference but then subsequently the demand is made by the individual workman for re-instatement and not for regularization. It cannot be said therefore that the reference is belated or otherwise it is stale and not maintainable. This point is therefore answered accordingly in negative.

Issue No.2 & 3:-

18. This is the main contentions issue. At the first brush I would observe that admittedly M/s. Golden Enterprises was engaged by the bank as a contractor since 1981 for doing house-keeping at Pune Zonal office and bank's quarters at Pune. In her evidence also the second party workman has stated that she has joined the services in 1998. She then admits that M/s. Golden Enterprises has abandoned the contract in November 1998 and the trade union namely Thekedar Kamgar Sangh has filed writ petition bearing No. 6247 of 1998 on behalf of the contract workers in the Hon'ble Bombay High Court. Admittedly, in the writ petition they have made averments categorically that they have been employed by M/s. Golden Enterprises. In para 3(a) of statement of claim it is stated that they were on the muster of M/s. Golden Enterprises. It is admitted that they were not under the disciplinary control of the bank. Even it is admitted that they were not getting the facilities as available to the other bank employees. In view of above categorical and clear admission, the second party workman involved in the present reference cannot take a contradictory and inconsistent plea and cannot claim employer-employee relationship with the first party bank.

19. Even then the Learned Counsel for the second party workman submitted that after termination of the contract in between the first party bank and M/s. Golden Enterprises, second party workman was continued in service and the workers were directly paid by the bank at the same daily wages rate which was paid by the contractor. Submission is to the effect that the contract workers of M/s. Golden Enterprises were engaged by the State Bank of India and therefore they cannot be treated as contract employees because the contract of the contractor M/s. Golden Enterprises with the bank was cancelled and since cancellation of the contract they were continued to be in the service which would show that first party bank was the principal employer.

20. In this respect, if we see the evidence of the concerned workman, she admits that in the writ petition it was categorically shown that the contract labours were employed by M/s. Golden Enterprises and they are working on behalf of the M/s. Golden Enterprises in the premises of bank at Pune. Admittedly, in the statement of claim in para 3(a), she and other workers were shown on the muster of M/s. Golden Enterprises. It is admitted by her that before 1998 M/s. Golden Enterprises use to make payment to them. She even admits that she and other workers were not under the disciplinary control of the bank. Admittedly they were not getting the facility as available to the other bank employees. In view of this it can be said that the concerned workman being the employee of the contractor, the ultimate supervision and control was of the contractor.

21. In this respect the evidence has come on record that one Shri Selvam used to submit the bills in respect of work of concerned workman and other workers and then the bank used to credit the amount in the account of each of the contract labour. The question is whether the said arrangement which was worked out is sufficient to show and establish the employer-employer relationship in between the concerned workman and the first party bank. When initially the concerned workman was engaged by the contractor and after termination of the contract in between the said contractor and the bank she has been continued with such arrangement in respect of payment of wages to her by the bank by depositing her wages directly in her account after the production of bills by the said Shri Selvam, then that would not be sufficient to say that first party bank being the principal employer was making payment of wages to the concerned workman. Merely because the amount was credited to the workman/s account under circumstances narrated above does not in any way alter the factual position that the concerned workman was a labour contractor and not an employee of the bank.

22. I say so because there is well defined procedure in the bank for recruitment and employment in the bank is done by inserting advertisement, holding competitive test for the employment, selection procedure through merit etc. etc. No such procedure was adopted at the time of engagement of the concerned workman as a Sweeper. The fact remains therefore that she was a contract labour for doing the house-keeping job at the banks premises and therefore she continued to be a contract labour even after the contract between said contractor and bank was terminated somewhere in 1999-2000.

23. The Learned Counsel for the first party bank submitted that the bank continued to engage contract labours for doing the house-keeping jobs at the bank premises in view or order of Hon'ble Bombay High Court dated 21.3.2006 whereby the Hon'ble Bombay High Court in view of petition by the petitioners took out a motion for clarification of order passed on 9.3.2006 by the Hon'ble Bombay High Court and also protection till reference is made at the instance of the petitioners to the tribunal for adjudication. The Hon'ble Bombay High Court observed that they do not see any protection granted by the court which was sought to be continued but then the Hon'ble Bombay High Court observed that the contract labours employed by the bank should be continued subject to the requirements and by following statutory obligations including payment of wages etc. and they need not be dis-continued only because the petition has been disposed of. That would show that in view of this order passed by the Hon'ble Bombay High Court the concerned workman was continued in services as per the requirement and after cancellation of contract with first party bank and the contractor namely M/s. Golden Enterprises, the subsequent arrangement was made in respect of payment of wages of the concerned employees who were engaged by the contractor and therefore the payment was made to them by depositing the amount in their bank accounts on submission of the bills by one Shri Selvam. That would again show that the concerned workman was not considered to be the employee of the first party bank. All the while she was

continued to be contract labour even after the order of Hon'ble Bombay High Court till her services automatically came to an end.

24. Even then the Learned Counsel for the second party workman submitted that the employees were the employees of M/s. Golden Enterprises till that contract was not abandoned or cancelled. After cancellation of the contract in 1999-2000 M/s. Golden Enterprises ceased to be contractor and these employees were ceased to the employees of M/s. Golden Enterprises. He submits that Hon'ble Bombay High Court has not directed to keep contract employees of M/s. Golden Enterprises in service in orders passed on 19.1.1999 and 1.2.1999. Therefore the relation between the S.B.I. and M/s. Golden Enterprises as principal employer and the contractor came to an end and after cancellation of the contract in 1999-2000 the services of the employees employed by M/s. Golden Enterprises for performing the job of cleaning, sweeping, house-keeping of S.B.I. premises automatically came to an end. These employees were ineligible to work with S.B.I. as contract workers of M/s. Golden Enterprises. So after termination of contract of M/s. Golden Enterprises and S.B.I., by oral orders by S.B.I. the employees were appointed to carry out the house-keeping, cleaning, sweeping work and then since that date till the date of termination the concerned workman were employed continuously by S.B.I. They worked for 10 – 12 years continuously on the basis of said oral order of S.B.I. and therefore there exists employer-employee relationship in between bank and concerned employees.

25. This submission is other way round and is not acceptable. A definite stand was taken by the concerned employees in the WP No. 6247/1998 that they are employees employed by M/s. Golden Enterprises which has been given a contract of house-keeping of S.B.I., Pune, Regional Office Pune has been employing several workers for carrying out the same work. It would thus not lie in their mouth to take contradictory and inconsistent plea that they are the workmen of the principal employer i.e. bank. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea should not be allowed to be raised. Common law principle of estoppel waiver and acquaintance are applicable in the industrial adjudication. In the context the hand can be laid on decision in case of Steel Authority of India V/S. Union of India 2006 (12 SC 243) wherein in para 28 of the judgment it has been observed that such inconsistent plea is not permissible.

26. On going through the order of Hon'ble Bombay High Court in the said WP No. 6247/1998 it has been observed as follows:

“We have gone through the orders passed by this court on 19.1.1999 and 1.2.1999 and we do not see any protection granted by this court and as sought to be continued. Undoubtedly the contract labours employed by Respondent bank shall be continued subject to the requirement and by following the statutory obligations including the payment of wages etc. and they need not be dis-continued only because this petition has been disposed of.”

27. In view of these observations of Hon'ble Bombay High Court even after the termination of contract in between M/s. Golden Enterprises and the bank the concerned workmen were continued and were paid wages by the bank by depositing the wages in their respective bank accounts. That does not mean that the bank has orally appointed them as its employees on regular basis even without following the statutory procedure.

28. Learned Counsel for the concerned workman / union submitted that the bank was paying bonus to the concerned employees. He refers to Ex.17 to submit that the bank was making payment through bankers' cheque. Therefore the submission is that as per Section 10 of Payment of Bonus Act, the employer is bound to pay the bonus. Section 2(14) of Payment of Bonus Act defines employer and it says that in relation to any other establishment the person who or the authority which was the ultimate control over the affairs of the establishment and the managing agent is the employer. He submits that as per section 21(4) the principal employer is not liable to pay bonus, gratuity as wages does not include it. He is liable to pay only wages if the contractors fails to pay wages. Since S.B.I. has paid bonus to the concerned employees it can be said that S.B.I. has engaged concerned workman directly and the bank is the employer of the concerned workmen who are covered under the Payment of Bonus Act.

29. This submission is also not acceptable since in the decision in case of Indian Iron & Steel Co. Ltd. V/s. State of West Bengal & Ors. 2011 (4 LLM 158), Calcutta, it has been observed in para 20 of the judgment that,

“There is no warrant for the proposition that in every case where the bonus is paid to an employee, the same is an indicator of the employee being a regular employee. The company is an establishment in public sector. The provisions of bonus act would apply to it only if it satisfies the conditions mentioned in sub section (1) of section 20 thereof. If indeed the company was obliged to pay bonus to its regular employees and had in the process shared its profits with the contract labours by paying the bonus in terms of bonus act, the very action of extending benefits of the social welfare legislation to said labours would not change their status to regular employees of the company.”

30. Next submission of Learned Counsel for the concerned workman is that the contractor did not obtain necessary licence. In this respect also it is necessary to refer the observations in para 20 of the citation cited supra. It has been observed that if at all the contractor did not obtain the licence it would open to the authority concerned to take action against it under section 23 of CLRA Act but for that the company cannot be penalized and the contract labours employed by such erring contractor be thrust upon it. Non-obtainment of licence without anything more would not

clothe the Respondent with any legal right to claim that they are the direct employees of the company and hence entitled to continue in service despite the contract with KNYCEE not being renewed.

In view of this legal position it can be said that even if the contract between the bank and the contractor namely M/s. Golden Enterprises was cancelled and could not be renewed that does not give right to the concerned employee / union to claim that they are direct employees of the bank.

31. Next submission of Learned Counsel for the concerned workman is that there is no documentary evidence to show that Shri Selvam was the contractor after the contract of M/s. Golden Enterprises was abandoned. He submits that before RLC the settlement of Minimum wages was reached between the bank and workman / union and the bank has accepted to pay the minimum wages to the concerned workman. In view of that the submission is that after the contract with M/s. Golden Enterprises was abandoned, it was the bank who paid the wages to the concerned employees by depositing the wages in their bank account and thereby the bank has accepted it to be the employer of the concerned workman.

32. It is no doubt true that there is no documentary evidence to prove that Selvam was submitting the bills on the basis of which the wages were deposited in the bank account of each workman. But then Selvam was one of the worker along with other employees. Even the workman herself has admitted in her cross-examination that due to inter-se dispute between the workers they requested the bank to make the direct payment and arrangement was worked out. In view of that it can be said that some arrangement was worked out in respect of payment to these workmen after the contract between the bank and M/s. Golden Enterprises was abandoned.

33. In view of this, it is the submission of Learned Counsel for the bank that the workmen concerned were continued to be engaged by K.P. Selvam as a contract labour after original contractor ran away and no wages were directly paid to them by the bank. In view of admission of the concerned workman that the arrangement was worked out after the inter-se dispute between the workers it can be very well said that the concerned workmen were paid wages directly in their bank account by way of this arrangement which was worked out. Therefore that will not give them the status of regular employees since initially they were engaged by the contractor and then there is no documentary evidence to show that the concerned workman was appointed by the bank.

34. It is then submission of Learned Counsel for the concerned workman that the concerned workman was doing the work of sweeping and cleaning under the direction, control and supervision of first party bank. He refers to copies of attendance register to submit that those registers are maintained by the bank and it bears the signatures of Waze, Kulkarni and Bhosale who are the bank officers. In view of this it is submitted that the bank officers were having control over the work carried out by the concerned employees.

35. In his cross examination witness Sudhir Ramchandra has denied the suggestion to the effect that the bank was having control over the work carried out by the concerned employees and that Mr. Jatar, Sudhir Pawar, Dube, Karkhanis were supervising the work and were allotting the work to the concerned employees. Even if some anxious consideration is given to this submission of Learned Counsel for the concerned workman then also it can be said that merely because the contract labour work is under the supervisions of officers of principal employer it cannot be taken as evidence of direct employment under the principal employer. In the decision in case of International Airport Authority of India V/S. International Air Cargo Union and Anr. 2009 (13 SCC 374) it has been observed in para 54 of the judgment that,

“Exercise of some control over the activities of the contract labour while they discharge their duties as labours is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employee of the principal employer.”

36. In the light of above observations I hold that there does not exist employer-employee relationship between the first party bank and second party workman. But then it is submission of the Learned Counsel for the concerned workman that the concerned workman had worked for 240 days and continuously in every completed year of service and her services came to be terminated without following the procedure laid down under section 25 of I.D. Act, 1947. In this view the submission is that the said termination is illegal and improper.

37. This submission is also not acceptable since the fact remains that the concerned workman was engaged by the contractor and after termination of the contract her services came to an end.

38. For it is explicit from the evidence of Sudhir Jalanwar, the witness of the bank that on 10.11.2010 the bank published tender notice in local newspapers for maintenance and house-keeping of bank premises. The bank also suggested the contract labours to form a society, partnership firm or a company for participating in the tender process. Contract labours did not pay heed to the suggestion made by the bank. The tender process was completed on 16.12.2011 and the contract for maintenance and house-keeping of the bank premises was awarded to contractor who had quoted the lowest rates. The new contractor displayed the notice on the bank's notice board stating that he was given contract for maintenance and house-keeping of the banks premises and invited those who were interested to work with him to approach him. However, the concerned workman and other workers did not avail this opportunity to work

under the new contractor. The fact remains therefore that after termination of earlier contract the services of the concerned workman automatically came to an end.

39. In view of this, the Learned Counsel for the first party bank submitted that though concerned workman had worked for 240 days in a year, her appointment was not from the regular stream of appointment and therefore is not entitled for regularization. He seeks to rely on the decision in case of Dena Bank V/s. Ashraf Yalu Shaikh 2009 III CLR 426 to submit that since the appointment of the concerned workman was not from the regular stream of appointment they are not entitled to reinstatement but only compensation, as envisaged under section 25 of I.D. Act, 1947.

40. So far the submission of the concerned workman to the effect that first party bank has terminated her services without following the procedure laid down in section 25-F of I.D. Act, 1947, it can be said that there is no employer-employee relationship between the bank and workman and that the services of the workman automatically came to an end after the new contractor was engaged by the bank after following tender process. It is not therefore possible to accept the submission of Learned Counsel for the concerned workman that the termination is illegal on account that it was without following the procedure laid down in section 25-F of I.D. Act, 1947.

41. Realising this difficulty, Learned Counsel for the concerned workman submitted that by way of settlement, the similarly situated workmen and employees in Mumbai were absorbed in services of the bank and therefore the first party bank has violated the principles of equity before law and gave different treatment to some set of employees in Mumbai by neglecting section 12(3) and 18(3) of I.D. Act, 1947 and therefore the termination is illegal. The submission is again other way round. There is no evidence of such discrimination. If any such agreement has been reached then it has no relation with the present dispute. The present dispute is squarely covered by W.P. No. 6247/1998 and the same has to be dealt with in the light of order passed by Hon'ble Bombay High Court in the said writ petition. In view of that the concerned workman cannot base a claim on the basis of settlement entered into in a different matter under different circumstances.

42. Considering all these facts, I hold that action of management in terminating the services of concerned workman w.e.f. 6.1.2012 is legal and justified. The above issues are therefore answered accordingly as against each of them in terms of above observations.

Issue No. 4 & 5.

43. In view of my finding the above issues, the concerned workman is not entitled to be re-instated in the services of first party bank with continuity of service and other consequential benefits. He is not entitled to relief claimed. Thus order.

ORDER

Reference is rejected with no order as to costs.

Date: 27.07.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2017

का.आ. 2561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 12/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.10.2017 को प्रकाशित हुआ था।

[सं. एल-12011/08/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 25th October, 2017

S.O. 2561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2017) of the Cent. Govt.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner and Jaipur and their workmen, received by the Central Government on 25.10.2017.

[No. L-12011/08/2016-IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 12/2017

Reference No. L- 12011/08/2016-IR (B-I)

Dated: 3.4.2017

The Chairman
Unnatishil Lok Tantrik Jan Morcha
A-122, Sagam Park, Rana Pratap Bagh, Delhi.

V/s

Deputy General manager (HR)
State Bank of Bikaner & Jaipur
Branch Kardhani,
Main Office, Tilak Marg,
C-Scheme, Jaipur.

AWARD

Date : 2.8.2017

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर का सर्व श्री कपिल, अजय कुमारवाल, अनिल सारवान एवं मनोज कुमार बेनीवाल, अंशकालीन सफाई कर्मचारियों को नौकरी में नियमित न किया जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were sent to both the parties as per the order of the tribunal dated 3.5.2017 fixing 2.8.2017 for filing statement of claim. On 2.8.2017 none appeared from both the side. After passing of order for the day at 16.00 hours representative of the bank Sh. Mamraj Meena, Branch Manager, Kardhani, Jaipur appeared & became aware with the order passed in forenoon.

3. Notice sent against applicant returned with endorsement of postal department that none named as addressee is available at the place of address. From comparison of the address of the applicant mentioned on the envelop & the address mentioned in the reference, there appears no mistake in the address of the applicant. As there is no other address of the applicant hence, there was no option to send a second notice to the applicant. Accordingly, further proceeding in the case was closed & case was reserved for award.

4. It is pertinent to note that on 3.4.2017 reference order was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry in his own motion nor he is traceable at the given address in reference because notice sent to the applicant has returned unserved due to reason as mentioned above.

5. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 27 अक्टूबर, 2017

का.आ. 2562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डब्ल्यू.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, - सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 11/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.10.2017 को प्रकाशित हुआ था।

[सं. एल-22012/117/2008-आईआर (सीएम- II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th October, 2017

S.O. 2562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L. and their workmen, received by the Central Government on 11.10.2017.

[No. L-22012/117/2008-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/11/2009

Shri Chhotia S/o Shri Dhanaram,
Through Samarlal,
Vill Indira Colony, Near Rishi Dhaba,
Near Palahaurai, Chhindwara

...Workman

Versus

Manager,
Damua Colliery,
M/s. Western Coalfields Limited,
Kanhana Area, PO Damua, Chhindwara

Management

AWARD

Passed on this 15th day of June, 2017

1. As per letter dated 12-2-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/117/2008-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of M/s. WCL in not allowing Shri Chhotia S/o Shri Dhanaram to join duty prior to completion of disciplinary proceedings against him is legal and justified? To what relief the workman concerned is entitled?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 1 to 6. Case of workman is that he was appointed in 1991 as dependent of his father as per bipartite agreement 9/4/0. He belongs to ST. He was appointed in Nandan Mine No.1 of WCL. He was transferred from Nandan to Rakhikol colliery in 2001. He was working as tub loader. He suffered from Hypertension, Arthritis. He was receiving treatment from Doctor H.Y.Tripude at Nagpur during 2-6-03 to 16-9-07. His wife also suffered from disease. She was receiving treatment from lady doctor at Nagpur. Chargesheet was served on him on 26-10-07. Shri O.P.Mehra was appointed as Enquiry Officer. On first date, Enquiry Officer explained his own view out the facts beyond the statement and evidence recorded in the enquiry on 24-4-08. When charge was explained to workman pleaded not guilty. Enquiry was fixed on 3-7-08. Workman though denied charges, delinquent was cross examined by management's representative violating procedure of enquiry. Burden to prove charges lies on management. Ist party referred to ratio held in various cases and reiterates that enquiry conducted against him is perverse. Charges are not proved. Enquiry Officer had objected provision of documents about illness of workman and his wife. Enquiry officer cross examined him. He was issued showcause notice dated 8-11-08. That management is indulged in dismissal of SC ST employees and appointing contractor labours in place to them to collect the benefit of more than Rs.150 in every such exchange. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim. As per 2nd party workman was habitual absentee. Attendance of workman in 2001 was only 16 days, attendance in 2003 – nil. Workman was transferred to Rakhikol colliery. That unit of Rakhikol was not in operation from 2002. Employees in said mine were transferred to other units of Kanhana Area. Workman was transferred from Rakhikol to Damua but he didnot report for duty. Therefore chargesheet was issued on 22-10-07. DE was conducted against workman. Shri H.R.Badmera was appointed as Enquiry Officer. Shri Balmiki was appointed as management representative. That enquiry was conducted against workman issuing notices by RPAD. On 23-4-08, workman along with co-worker were present in enquiry. On 24-4-08, workman and his co-worker were present.. workman submitted he did not receive transfer order on 1-7-08. Workman and his co-worker were not present in enquiry. Enquiry was adjourned to 3-7-08. Workman and his co-worker did not

adduce any evidence, they participated in enquiry. Management Representative produced certificate about working were admitted in evidence. It is reiterated that enquiry was conducted as per rules. Order of transfer was not isolated. The employees in Rakhikol were shifted to defence unit. Workman had not attended duty. There was no violation of standing orders while conducting enquiry. That unauthorized absence of workman were proved. Enquiry conducted against workman is proper and legal.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of M/s. WCL in not allowing Shri Chhotia S/o Shri Dhanaram to join duty prior to completion of disciplinary proceedings against him is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. The term of reference pertains to not allowing workman to join duty prior to completion of disciplinary proceedings. The term of reference doesnot relate to legality of termination or dismissal of workman. His statement of claim is silent that workman was not allowed to join duty during pendency of Enquiry Proceedings. Statement of claim only devoted w.r.t. wrong procedure adopted by Enquiry Officer allowing cross examination of workman by management representative or Enquiry Officer himself.

6. Workman did not adduce evidence despite of repeated chances given to him. His evidence was closed on 15-7-15.

7. Management filed affidavit of evidence of Shri Ajay Kumar Mehta and Balkishan. Ajay Kumar not appeared. Balkishan in his affidavit has narrated working days of working during 2001- 16 days, 2002-03- Nil days. Chargesheet was issued t workman that workman was transferred from Rakhikol to Damua. Workman did not report to duty. Enquiry was conducted against workman. Workman and his co-worker had participated in Enquiry Proceedings. Workman relied on certain documents. Enquiry Report was submitted holding workman guilty. Considering serious nature of charge proved against workman, services were terminated as per order dated 30-4-09. From evidence of management's witness, documents of enquiry are admitted in evidence at Exhibit M-1 to M-3. Ist party remained absent and failed to cross examine witness of management.

8. Considering evidence of management's witness, services of Ist party are terminated on 30-4-09, reference has become infructuous as term of reference pertains only that workman was denied from joining duty during pendency of Enquiry Proceedings. For above reasons, I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management of M/s. WCL in not allowing Shri Chhotia S/o Shri Dhanaram to join duty prior to completion of disciplinary proceedings against him is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 अक्तूबर, 2017

का.आ. 2563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, - सह – श्रम न्यायालय नं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 34/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.10.2017 को प्रकाशित हुआ था।

[सं. एल-22011/07/2016-आईआर (सीएम- II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th October, 2017

S.O. 2563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of M/s.F.C.I. and their workmen, received by the Central Government on 11.10.2017.

[No. L-22011/07/2016-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH****Case No. ID No 34 of 2016,**

The President, Food Corporation of India Handling Workers' Union,
8651, Arakashan Road, Pahar Ganj, New Delhi-110055

...Petitioner

Versus

1. The General Manager (Region), Food Corporation of India,
Regional Office, Bay No. 29-32 sector-4, Panchkula (Haryana)
2. The Executive Director (North), Food Corporation of India, Zonal
Office, North,A-2-A,A-2-B, Sector-24, Noida, U.P.

...Respondents

For the Workman : Nemo

For the Management : Nemo

AWARD**Date : 17/08/2017**

Government of India Ministry of Labour vide notification No.L-22011/7/2016/IR (CM-II) dated 05.09.2016, has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of the Executive Director(North), Noida,UP and the General Manager(Region) Panchkula, Haryana, Food corporation of India in not accepting the demands of food corporation of India Handling Workers Union in respect of Induction of 39 more handling labour at FCI, BG, Dhand under no work no pay system is legal and justified? If not, what relief the union is entitled to?”

This reference dates back to September 2016 but the workmen have continuously been absenting right from day one. The case has been adjourned for half a dozen times for appearance of the workman but it has not yielded any result because the workman appears to be least interested in pursuing the matter.

The reference relates to dispute between the workmen and FCI in respect of induction of 39 labourers. It is a case of unexplained long absence of the workmen and their failure to substantiate their claim because it was for the workmen to establish their claim but then the workmen have not been able to put forth their stand. So the case is dismissed for continuous non appearance of workmen. Accordingly the reference is answered. Copy of the award be forwarded to Central Govt. for further necessary action.

Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

A. K. KOUL, Presiding Officer